

**Immigration: An Expedient Complement To  
Disaster Response?**

**An Examination of Canada's Post-Earthquake  
Immigration Measures for Haiti and the Influence  
of the Haitian Diaspora in Canada**

**Sarah D'Aoust**

**MA Student, School of International Development and  
Global Studies**

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# Abstract

The Canadian response following the Haitian earthquake of 2010 was not solely focused on providing humanitarian assistance. Canada also used several immigration measures both at the federal level and the provincial level in Quebec in order to facilitate the immigration of eligible Haitians to Canada and their subsequent reunification with their Canadian family members. This thesis explores these immigration measures and evaluates their effectiveness. In addition, the research examines the role that the large Haitian Diaspora in Canada played in bringing about the adoption of a set of immigration measures specifically for Haitians.

The research shows that the Canadian measures implemented were both *multi-dimensional* – as a variety of immigration mechanisms were used, and *multi-level* – as the Canadian response included both federal and provincial initiatives in Quebec. While a number of measures were introduced federally, none of these measures could be considered “special” as they were all possible under Canada’s immigration legislation, and they were not unique to the post-earthquake context. In contrast, Quebec’s Humanitarian Sponsorship Program for Haitians was very “special” in that it was the first time such a program was implemented for a large group of people. The research also points to the fact that although using immigration mechanisms to respond to a humanitarian crisis has its benefits, these mechanisms are not designed to provide prompt protection and relief to individuals affected by crisis situations. The research also demonstrates that the use of the available complementary protection measures (humanitarian and compassionate considerations, moratorium and protected person status) did not make up the primary thrust of the Canadian immigration response to the earthquake in Haiti. This fact is indicative of the inadequacy of these measures in providing protection to individuals displaced by environmental factors. Finally, it is argued that although the existence of a large Haitian Diaspora was influential in creating a climate open to the adoption of special measures for Haitians, the Haitian Diaspora did not necessarily influence the specifics of the measures adopted to a significant degree.

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«[...] le moment était propice, était favorable, tout le monde s'attendait à ce que quelque chose de beau, de grand se fasse. Mais, le gouvernement n'a pas été aussi loin qu'on l'aurait espéré. »

**Ninette Piou**

*“It is true that after a year and a half, I am absolutely wasted. There’s nothing left. I spent a time where everyday I used to get 30-40 phone calls. And I would listen to each one of them, and each one was more heartbreaking than the other. So I got to a point where I couldn’t anymore. And this is why, I think, for lack of a better word, I feel almost like a failure. **Because I did case by case<sup>1</sup>, but I never figured out a way to find a systemic solution... and to a systemic problem, you need a systemic solution.**”*

*And I didn’t have the support to get the government to change or adopt regulations that would have, not changed the law, because changing the law is too hard. But we can pass regulations all the time. **We could have made Haitians a special category under the Immigration Act. Making them a special category had nothing to do with changing the legislation. Just a memo from the Minister would have done it, and that would have opened the door for us to find all kinds of great solutions.** And when I asked for that, it didn’t go far. So those are the things that when I look back I regret an awful lot.”*

**Gerard Etienne**

*“Engage the government on solid grounds. Make specific demands. At the time after the earthquake, 30 million Canadians were supporting us. We could have asked for almost anything, and they would have been there by our sides. We’ve lost the momentum and that’s a crying shame.”*

**Gerard Etienne**

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<sup>1</sup> Gerard Etienne made these comments in reference to a specific group of people – Haitian refugee claimants who were in Canada prior to the earthquake but had family members in Haiti that they could not be reunited with, including in some cases dependent children (see CBC News, 2010b for more details on the case of Sheida Prince and her son Shad-Benoit).

# Introduction

On January 12, 2010, a 7.0 magnitude earthquake hit the Haitian capital of Port-au-Prince. Dany Laferrière, a well-known author and member of the Haitian Diaspora in Canada, was in Haiti at the time to attend a world-renowned Literary Festival. He writes this account of the Haitian earthquake:

La terre s'est mise à onduler comme une feuille de papier que le vent emporte. Bruits sourds des immeubles en train de s'agenouiller. Ils n'explorent pas. Ils implorent, emprisonnant les gens dans leur ventre. Soudain, on voit s'élever dans le ciel d'après midi un nuage de poussière. Comme si un dynamiteur professionnel avait reçu la commande expresse de détruire une ville entière sans encombrer les rues afin que les grues puissent circuler (Laferrière, 2010, p.19).

The Haitian Government estimates that 217,366 Haitians died as a result of the earthquake and another 300,572 were wounded (Centre D'Information du Gouvernement Haitien, 2010). In addition, some 604,215 people chose to leave the capital area for other regions of the country following the earthquake, and an estimated 1.3 million Haitians continue to reside in "[...] spontaneous settlement sites [...]" (OCHA, 2010, March 1; OCHA, 2010, Oct. 12). These estimates demonstrate not only the devastation, but also the massive human displacement caused by this natural disaster.

The earthquake also caused a certain amount of emigration from Haiti. Although there are no official statistics available from the Haitian Government on the numbers of Haitians who emigrated following the earthquake, the International Organization for Migration (IOM), as well as Haiti's former Minister for Haitians Living Abroad, Mr. Edwin Paraison, have made estimations in this regard. According to IOM estimates, nearly 200,000 Haitians crossed the

border into the Dominican Republic following the earthquake (IOM-Reliefweb, 2011, par.4). Furthermore, Mr. Edwin Paraison, noted the following regarding Haitian emigration: “we believe some 20,000 professionals left the country as part of family reunification programmes put in place by some developed countries” following the earthquake (qtd in Renois, 2010, Interview with Edwin Paraison, p.34). CIC Data tables suggest that at least 5,000 Haitians arrived in Canada between January 2010 and March 2011 (see Appendix J).<sup>2</sup> This research deals with the human displacement abroad precipitated by the earthquake, and the various measures put in place in Canada that enabled this emigration.

## **Canadian Engagement in Haiti Pre- and Post-Earthquake**

In order to contextualize the range of measures adopted by the Government of Canada to respond to the humanitarian crisis in Haiti, it is necessary to outline some important details related to Canada’s past and current engagement in the country. The Canadian Government has a long history of engagement with Haiti, dating back to 1954 when diplomatic relations were officially established between the two countries (for a detailed analysis and history of Canadian engagement in Haiti see Baranyi, 2011, p.208-225), and 1968 when Canada’s first aid program for Haiti was implemented (Rights & Democracy, 2010, p.1). Since 2004, Canadian engagement in Haiti has focused on “[...] diplomatic, security and development efforts [...]” as well as multilateral stabilization efforts (Baranyi, 2011, p.209), and Canada has “made large, multi-year development assistance commitments to Haiti averaging around CA \$100 million/year, and usually exceeded those allocations in its disbursements” (Baranyi, 2011, p.205, 210). Canada’s continued engagement in the country is demonstrated by the fact

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<sup>2</sup> (CIC, 2011, Data Table: Preliminary Admissions of Applications Approved for Permanent Resident Application Processed in OHPO/PAP since the Earthquake in Persons)

that “Haiti has become the number-one recipient of Canadian assistance in the Americas and the number-two recipient in the world” (Rights & Democracy, 2010, p.2).

Following the earthquake Canada implemented a range of measures in response to the humanitarian crisis in Haiti. For example, Canada sent its Disaster Assistance Response Team (DART) to the country (Department of Foreign Affairs and International Trade Canada (DFAIT), 2010). Approximately 2046 Canadian Forces personnel were deployed to support both the Haitian government as well as the Canadian Embassy (DFAIT, 2010).

The Canadian Government and the Canadian people also made significant financial contributions to assist with humanitarian aid and reconstruction projects. For example, the Canadian government gave 85 million dollars to different humanitarian agencies (ie. the Red Cross, Canadian NGOs etc), and committed to providing another 400 million dollars to future reconstruction projects (DFAIT, 2010). Likewise, the Canadian people donated generously, raising 220 million dollars for relief efforts - a figure that the Canadian government committed to matching (DFAIT, 2010). According to Rights & Democracy (2010), the private donations made by the Canadian people “ [...] were the highest per capita in the world” (p.5).

In addition to offering traditional humanitarian relief, certain countries that are home to large Haitian communities (namely Canada, the United States and France) also adopted a variety of immigration measures to respond to the displacement of Haitians as a result of the earthquake. These countries used a number of traditional immigration measures, including for example permanent residency or family sponsorship. They have also used

complementary protection measures, which can be differentiated from traditional immigration measures, as they are designed specifically to provide protection to individuals identified as having a particular protection need who do not necessarily fall under the Refugee Convention framework (McAdam, 2007a, p.20, 21).

This research does not offer a comparative analysis of immigration measures adopted by Canada, France and the United States following the Haitian earthquake. Such analysis requires considerable research and resources that are beyond the scope of a master's thesis. The more modest objectives of this research are to assess immigration measures adopted in Canada in response to the Haitian earthquake and to identify the influence of the Haitian Diaspora in these decisions.

The immigration measures adopted in the Canadian context are of particular interest.<sup>3</sup> To begin, they were more expansive than those adopted in the United States<sup>4</sup> and France,<sup>5</sup> and

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<sup>3</sup> It should be noted that my study of the Canadian measures implemented also includes a discussion of the measures implemented in the area of refugee protection.

<sup>4</sup> The United States primary immigration response following the earthquake was to designate Haiti as a country under Temporary Protected Status (TPS) for a period of one year (USCIS, 2010, July 10). However, very few other immigration measures were put in place by the United States to respond to this crisis. Royce Bernstein Murray and Sarah Petrin Williamson, who published a working paper on the use of migration tools in a post-disaster context with a specific focus on Haiti (June, 2011) noted the following with respect to the United States' use of migration tools following the Haitian earthquake: "Despite the great power of migration, U.S. post-disaster assistance to Haiti, as in all other recent cases of post-disaster assistance, focused almost exclusively on aid. Migration policy changes were small and did little to help people in Haiti affected by the quake [...] essentially no Haitians needing to leave Haiti because of the earthquake have been allowed to come to the U.S." (p.i). In addition, Murray and Williamson also briefly mentioned the migration measures put in place by Canada, noting that Canada was: "the country closest to the U.S. that made the most effort to accommodate Haitians immediately after the earthquake [...]" (see p.10).

<sup>5</sup> France made similar immigration policy decisions as Canada following the earthquake. For example, on January 14, 2010 France's Minister of Immigration, Eric Besson announced that France would relax the conditions for family sponsorship, would facilitate visas for familial visits to France, and would make special humanitarian considerations for individuals requiring medical treatment in France (Besson, 2010a). Like Canada, France also temporarily suspended all deportations of illegal Haitian immigrants (Besson, 2010a). According to the French *Ministère de l'immigration, l'intégration de l'identité nationale et du développement*

were primarily permanent immigration mechanisms rather than temporary solutions to the displacement caused by the earthquake. Secondly, the Canadian measures introduced following the Haitian earthquake were broader in scope than the measures that have been adopted in Canada in the past to respond to displacement caused by natural disasters (for example the Asian Tsunami of 2004).<sup>6</sup> Thirdly, the measures introduced in the Canadian context were unique as the province of Quebec adopted its own special measures in tandem with the immigration measures introduced by the federal government. The measures adopted by the province of Quebec are of particular interest, as the province is home to a large Haitian community. In 2006, 89.2% of the population of Haitian origin living in Canada was concentrated in the province of Quebec, and 93.8% of individuals of Haitian origin living in Quebec were concentrated in the city of Montreal (Statistics Canada, 2006 a,b,c). In addition, the Quebec Special Measures for Haiti were innovative, and were more generous than the measures put in place by the federal government. The differing responses by the federal government and the provincial government of Quebec in this regard provide an interesting area for comparison, and are discussed at length in this research.

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*solidaire*, 1646 applications for family reunification were received between January 12 and February 28, 2010 and as of June 1, 2010 only 423 visas had been given under this same category (Besson, 2010b).

<sup>6</sup> In response to the Asian Tsunami, Canada placed priority on processing applicants from Tsunami affected areas under the Family Class immigration stream (CIC, 2005, par. 3). At the federal level, CIC also noted that it would take into consideration “[...] on a case-by-case basis, other close family members of Canadian citizens and permanent residents who have been and continue to be seriously and personally affected by the disaster” (CIC, 2005, par.3). The Canadian government also waived the processing fees, and permanent resident fees associated with applications from individuals affected by the Tsunami (CIC, 2005, par. 4). While some of these measures were also introduced following the Haitian earthquake (which is explained in greater detail in Part I), the reach of the measures adopted in each case was very different. According to CIC documents, only 366 permanent resident visas were issued and 278 individuals obtained permanent residence between December 27, 2004 and June 7, 2005 as a result of Canadian government efforts to assist individuals directly affected by the Tsunami with family reunification in Canada (CIC, 2010, Jan. 20 – Overview of Special Measures Taken in Natural Disasters).

The following questions form the basis of this research: what immigration measures did Canada introduce or adopt in response to those people displaced by the Haitian earthquake? Did these measures live up to their stated objectives? Does the Canadian response reveal any gaps in the protection of individuals displaced by natural disasters? Did the Haitian Diaspora in Canada influence the immigration policy decisions made in the weeks following the earthquake?

This research demonstrates that in the Canadian context, a number of immigration measures were adopted for Haitians following the 2010 earthquake. The Canadian measures were both *multi-dimensional* – benefitting both Haitians residing temporarily in Canada as well as a certain number of individuals from Haiti, as well as *multi-level* – as these included both federal and provincial initiatives. Furthermore, it is demonstrated that although the existence of a large Haitian Diaspora was influential in creating a climate open to the adoption of special measures for Haitians, the Haitian Diaspora did not necessarily influence to a great degree the specifics of the measures adopted. It is important to note, that although the analysis of the influence of the Haitian Diaspora in Canada is an important component of this research, this analysis is limited due to the difficulties encountered in setting up interviews with leaders within the Haitian Community, as well as interviews with public servants involved in the policy-making process.

**Part I** of the analysis discusses at length the federal immigration measures adopted for Haiti and demonstrates that while a variety of immigration measures were used in response to this crisis, these were not “special” to the post-earthquake context as all of the measures fell within existing immigration legislation and had been used in the past. Although the main

focus of this Part is on the immigration measures implemented federally, this analysis also includes a discussion of measures implemented in the area of refugee protection. Although the immigration measures used were not “special”, a unique jurisprudence was established in the area of refugee protection for Haitian women. **Part II** discusses other Canadian mechanisms used following the earthquake that would be considered “complementary protection mechanisms”. It is demonstrated that although these mechanisms exist to respond to exceptional circumstances, they did not make up the thrust of the Canadian response to displaced Haitians. **Part III** provides an overview of the special immigration measures adopted by the provincial government of Quebec, and highlights the unique and innovative features of these measures. **Part IV** briefly compares the measures adopted federally and by the provincial government of Quebec, outlining their similarities, differences, strengths and weaknesses. **Part V** discusses the influence of the large Haitian community in the province of Quebec on the adoption of the Quebec Special Measures. It is shown that although the Haitian community may not have directly influenced the adoption of the measures, its important and interconnected presence within Quebec society had an impact on the adoption of immigration measures following the earthquake. Finally the conclusion synthesizes the results of this research, and points to some areas for future study.

## **Design and Methodology**

To respond to my research questions, I relied predominantly on documentary research. In order to analyze the different policy responses, I monitored documents produced by Citizenship and Immigration Canada, the Immigration and Refugee Board of Canada, as well as the *Ministère de l'Immigration et Communautés culturelles Québec* (MICC). These

documents included press releases, public statements, and other relevant policy documents. There were very few secondary academic sources to consult on this topic due to the current nature of the research.

I also relied on primary documents from Citizenship and Immigration Canada that were obtained from two different *Access to Information* requests. One of these was a previously released *Access to Information* request for briefing materials for the Minister for a one-month period following the earthquake in Haiti. I then submitted the two other requests that encompassed a larger date range (January 11/12, 2010 – December 31, 2010). The first request sought documents (for example briefing materials, policy documents) surrounding the immigration measures adopted federally. The second request sought briefing materials concerning the Quebec Special Measures, as well as materials and correspondence surrounding the expansion of sponsorship criteria in Quebec (see Appendices A, B, C for more details). I received the first request on October 1, 2011. In total, this request was made up of 785 pages<sup>7</sup> of information pertaining to the immigration measures implemented for Haiti.<sup>8</sup> I did not receive the second request prior to November 2011.

The purpose of submitting *Access to Information* requests was to obtain background information on the reasons for the adoption of the measures, the considerations taken into account when these decisions were made, the past practices that were referenced in the decision making process, and the consultation process with members of the Haitian

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<sup>7</sup> It is important to point out, that of these 785 pages, over 200 pages were exempt.

<sup>8</sup> Given the size of this *Access to Information* release package, documents cited are referred to as (CIC, ATIP Request, p.#) throughout the remainder of the thesis. A hard copy of this release package is on file with the author.

community. It was necessary to submit *Access to Information* requests due to the inability of certain public servants from Citizenship and Immigration Canada to participate in this research. After multiple invitations were extended to public servants from CIC, only one public servant from CIC agreed to participate in the research project. Although the invitations to participate were declined, senior managers suggested that the *Access to Information* route was the best avenue to obtain information pertaining to this topic.

An examination of the immigration laws and regulations in Canada as well as in the province of Quebec was also required given that Quebec adopted its own special measures to respond to the displacement caused by the earthquake. Primary legal documents related to immigration and refugee policies were examined including for example the Canadian *Immigration and Refugee Protection Act and Regulations* as well as the *Canada-Quebec Accord*, the *Loi sur l'Immigration au Québec*, and Quebec's *Regulation respecting the selection of foreign nationals*. Legal analyses and case decisions were also consulted regarding refugee determinations for Haitian women in Canada following the earthquake.

Basic quantitative analysis of data sets was also important in evaluating the reach of the policies adopted. The statistics used in this report are drawn primarily from detailed CIC Quarterly Statistics for 2010, as well as more detailed CIC statistics from January 2010 to March 2011 concerning the measures. Statistics regarding the Quebec Special Measures were obtained through public documents as well as through an interview with the Director of the *Direction de l'immigration familiale et humanitaire* at the *Ministère de l'Immigration et Communautés culturelles Québec* (MICC).

For the purposes of this research I also conducted semi-structured interviews: one interview with a public servant from Citizenship and Immigration Canada; one interview with a public servant from the MICC; three interviews with lawyers specializing in Canadian immigration and refugee law; and four interviews with leaders from within the Canadian Haitian Diaspora (three interviews with leaders of Haitian Diasporic groups in Montreal and one interview with a leader within the Haitian Community in Ottawa). These semi-structured interviews are used as a secondary source of information to help clarify and confirm preliminary findings. Please see the Appendices E-H for examples of the interview questionnaires.

### **Methodological Challenges Encountered During the Research Process**

I encountered a number of challenges throughout the research process, most notably with the interview process and the gathering of statistical data. While nine individuals agreed to participate in the interview component of this research, it was a months-long process (from March to July 2011) to set up and conduct these interviews.

I had the most difficulty in setting up interviews with public servants from the federal government involved in program and policy development, in particular at Citizenship and Immigration Canada. I was encouraged instead to submit an *Access to Information* request on this topic rather than to speak directly to individuals within CIC who worked on program policy. At the time that I was setting up interviews, the 2011 federal election was looming. It is possible that the impending federal election affected the interview process, and my ability to secure interviews with key public servants. In contrast, perhaps this topic was more sensitive than I had predicted, and the divergence between the federal and provincial

approaches in this regard may have led federal public servants to remain guarded about sharing information on this topic. I spoke with one public servant within CIC about the immigration measures adopted at the federal level; however, I had to rely on the primary documents received through an *Access to Information* request for details surrounding the policy-making process.

The *Access to Information* process was lengthy and I met with several delays. Initially, I submitted three *Access to Information* requests - one in April 2011, which was later revised and re-submitted as two separate requests in May and June 2011 respectively (see Appendices A, B, C). Each access to information request was responded to within the 30 day protocol by the Access to Information Office with a letter noting that the requests had been “extended” for an additional 210 days and 90 days respectively. I eventually received one of the requests (which had been extended for a period of 210 days) on October 1, 2011. There was a significant amount of pertinent information within this request; however, in the case of several final recommendation memoranda signed by Minister Jason Kenney, most of the recommendations, considerations and decisions were blacked out. I also submitted a fourth ATIP request to Canada Border Services Agency in September 2011 seeking data on the number of Haitians protected under a temporary stay of removal (or moratorium)(see Appendix D). This request for information also required a 90-day extension for consultation purposes.

The lack of participation of public servants from Citizenship and Immigration Canada in this research as well as the delays I met in receiving information through the *Access to Information* channel, while posing a challenge to my data collection, also represent

interesting research findings. Due to Canada's comprehensive response as a whole in terms of introducing a variety of immigration measures, I anticipated that potential research participants would be interested in talking to me about this topic, as it would be a point of pride for Canadians and public servants alike. My findings have shown that this particular topic is very politically sensitive.

I also encountered difficulty in accessing accurate statistics on the number of individuals who benefitted from the measures federally. Statistical data from Quebec was obtained through an interview with a Director from the *Ministère de l'Immigration et Communautés culturelles du Québec* (MICC). My research participant from CIC suggested that I contact the CIC Statistics division in order to obtain the most accurate data available for release. Through CIC's statistics division, I was able to obtain a copy of the Quarterly Administrative Data for the year 2010. However, this data was not detailed enough in some instances to reveal the practical impact of the Haiti special measures. I then submitted a request for very specific data pertaining to the special immigration measures (see Appendix I). In total this process took almost two months before I received any of the statistics requested.

In summary, the lack of willingness to participate in this research by several participants from CIC (with the exception of one), the lengthy delays in the *Access to Information* process, and the wariness of providing readily available statistics is evidence of the delicate nature of this research topic and of an atmosphere where information is tightly controlled. This contrasted with my experience with my research participant from Quebec's MICC, who spoke freely about the different measures adopted by the province, the reasons for their adoption, as well as their impact (in terms of statistics). Given the tight time frame to

conduct my research, I was not able to investigate in detail the reasons for the differing responses at the federal and provincial level. However, these differences may be indicative of the ways in which the federal set of immigration measures versus Quebec's special program were either criticized as being insufficient, or were well received and applauded.

## **Definition of Terms and Overview of Key Academic Literature**

Before analyzing in detail the different immigration measures that were introduced in Canada, it is necessary to highlight the importance of environmental or disaster induced displacement as a field of study. In addition, it is important to clarify some of the terms that will be used throughout the rest of the analysis. I begin by showing why environmental or disaster-induced displacement is a significant area of study that only continues to grow in importance as we see more and more displacement as a result of climate change or sudden-onset natural disasters. I then explain the important differences between Convention Refugees versus individuals who have been displaced as a result of environmental factors or natural disasters, as well as the reasons why these individuals receive different protection guarantees as a result of the mode of their displacement. Finally, the definition of the term "diaspora" is provided as well as an explanation as to the importance of the influence of the diaspora on domestic politics.

### **Environmental Displacement**

The field of forced migration and displacement has been very well researched, especially in the areas of civil conflict, refugee law and the protection of internally displaced persons. However, people displaced as a result of natural disasters and environmental factors have

received much less attention. This is particularly evident as the leading statistical agency responsible for monitoring the numbers of internally displaced worldwide (the Internal Displacement Monitoring Centre - IDMC), does not include the environmentally displaced in its annual statistics (Cohen, 2009, p.58).<sup>9</sup> In addition, individuals who have been displaced as a result of natural disasters have received less attention due to the fact that these events have, in the past, often resulted in “temporary displacement” rather than long-term displacement (Levine, Esnard & Sapat, 2007, p.6). Moreover, the environmentally displaced are often overlooked as they are not always able to cross an international border to flee their circumstances, and do not fall under the limited convention refugee definition (McAdam, 2007b, p.4; Cohen, 2007; Cohen & Bradley, 2010, p. 104-5).

Nevertheless, the perception of environmental displacement as a temporary problem is beginning to change as a result of a growing awareness that some of this displacement will in fact be permanent. This is evidenced by the case of an island located in the Pacific Ocean known as Tuvalu, which experts believe will be entirely submerged in roughly ninety years as a result of rising sea levels associated with climate change (Lopez, 2007, p.372-3). Tuvalu is also an interesting example to illustrate the increasing international consequences of environmental displacement. The government of Tuvalu has already approached both New Zealand and Australia regarding settlement possibilities for its displaced residents (Connell, 2003, p.99). In response, New Zealand has agreed to accept 75 Tuvalu nationals per year; Australia on the other hand has made no such accommodations (Connell, 2003, p.95). In addition, in 2002, Tuvalu’s Prime Minister Koloa Talake threatened to take legal action at

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<sup>9</sup> It should be noted however, that the IDMC, in collaboration with the United Nations published an in-depth study in 2009 on the topic of individuals displaced by natural disasters (see Cohen & Bradley, 2010, p.103-4; OCHA & IDMC, 2009).

the International Court of Justice (ICJ) against Australia and the United States (known to be amongst “[...] the worst national emitters of greenhouse gases [...]”, and also non-signatories to the Kyoto Protocol) (Connell, 2003, p.103, 105; Ede, 2002, p.39). Ultimately, Prime Minister Talake was not able to bring the Tuvaluan case to the ICJ because in that same year he failed to be re-elected as Prime Minister. While there is some skepticism as to whether such a lawsuit would have been successful at the ICJ (see Jacobs, 2005, p.115), the Tuvalu case, and the threats of its former Prime Minister to bring developed nations to justice for their part in environmental displacement demonstrates not only the seriousness of this issue, but also points to the potential transnational consequences of environmental displacement.

Environmental displacement will remain a significant area of research in the future given that the estimates of the number of people to be displaced as a result of environmental factors continue to grow. In the early 1990s, Norman Myers, a leading scholar in the area of climate change and displacement, estimated that the numbers of people displaced by environmental factors (related to climate change) could be in the range of 150 – 200 million people by the year 2050 (Myers, 1993, p.758; Myers & Kent, 1995, p.148-149). However, since then, Myers has increased these figures, noting that the number of people displaced by environmental factors could be in the range of 200 - 250 million people (Myers, 2005, p.1; qtd in McAdam, 2007b, p.1; qtd in Christian Aid, 2007, note 10).<sup>10</sup> Furthermore, the incidence of natural disasters<sup>11</sup> has been increasing over the last two decades, from a reported 278 disasters in 1990 to a peak of 434 disasters in 2005 (Vos, Below & Guha-Sapir, 2010,

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<sup>10</sup> It is important to note that while Myers estimates are widely referred to when discussing the issue of environmental displacement or environmental refugees, the accuracy of the data has been criticized (see Brown, 2008, p.1)

<sup>11</sup> Sudden-onset natural disasters include earthquakes, volcanoes, floods, droughts, and epidemics to name a few (see OCHA & IDMC, 2009, p.6 and; Vos, et. al, 2010, p.5 for additional examples).

p.2). In addition, on average 392 natural disasters were reported annually between 2000 and 2008 (Vos, Below & Guha-Sapir, 2010, p.19).<sup>12</sup> The displacement impacts of sudden-onset natural disasters were particularly damaging in 2008 when an estimated 36 million people were displaced, and roughly 15 million of these were displaced as a result of the Chinese Sichuan earthquake alone (OCHA & IDMC, 2009, p.9-10, 15; qtd in Cohen & Bradley, 2010, p.97). These statistics demonstrate the growing impact of environmental displacement (both as a result of climate change and sudden onset natural disasters), and is evidence of the importance of this growing field of study.

Despite the fact that the numbers of “environmentally-displaced persons” (EDPs) are growing rapidly, these individuals have not been given any formal legal status under international law, as they are not considered convention “refugees” (Lopez, 2007, p.388-9; Boano, Zetter & Morris, 2008, p.4, 10, 24).<sup>13</sup> The lack of a formal legal status for EDPs has significant consequences for these individuals as it compromises their possibilities for international protection (Lopez, 2007, p.387-9). Due to this protection gap, countries often adopt their own protection mechanisms in order to respond to these situations of displacement. The idea of providing “complementary” protection has evolved over time, and is increasingly considered to be a viable option in responding to individuals who are not convention refugees (Joly, 2002; McAdam, 2007a).

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<sup>12</sup> According to the Centre for Research on the Epidemiology of Disasters (CRED), 2009 marked a drop in the reported number of natural disasters to 335 (Vos, et. al, 2010, p.19). However, in 2010, the CRED reported that the number of natural disasters jumped to 385 (Guha-Sapir, Vos, Below & Ponserre, 2011, p.1). In 2010, 297,000 people died as a result of natural disasters, with the Haitian earthquake accounting for 75% of these deaths (222,570 people) (Guha-Sapir et al, 2011, p.1).

<sup>13</sup> The definition of a convention refugee will be discussed in more detail on pages 17-18.

## **Environmentally Displaced People and Complementary Protection Mechanisms**

There is little consensus on the part of the international community on what legal status individuals displaced by environmental factors should receive (Lopez, 2007, p.388; Boano et al, 2008, p.10, 24). These individuals are often given a number of different titles including “environmental refugees”, “environmentally displaced people” (EDPs) and “forced environmental migrants”; however, their lack of a formally recognized status has serious implications for their possibilities for protection (Boano et al, 2008, p.4, 8, 10). This protection problem is most clearly evidenced by the situation in Haiti, where an estimated 1.3 million people have lost their homes as a result of the earthquake (OCHA, 2010, Mar. 1; OCHA, 2010, Oct. 12). Uprooted suddenly, these individuals face a number of obstacles to seeking protection (be it temporary or long term) in another country. These obstacles point to some of the gaps in the international protection regime for people displaced by natural disasters.

The 1951 Refugee Convention defines a refugee as a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country” (UNHCR, n.d., par. 3; UNHCR, 2007). This definition, which is widely accepted, has been highly criticized for being too narrow and exclusive of other forced migrants (Wilde, 2001; Cohen, 2004; Cohen, 2009; Cohen, 2007; Dewind, 2007; Lopez, 2007). However, there are two important elements of this definition that differentiate refugees from other categories of

forced migrants (Hathaway, 2007, p.352), and that render it difficult for EDPs to make a claim for refugee status.

To begin, in order to qualify for international protection under the Refugee Convention, EDPs have to be outside their country of origin. The crossing of an international border (also known as the “alienage requirement”) is thus key to the convention refugee definition, as the series of rights that are afforded to refugees are a result of their presence outside their country of origin (Hathaway, 2007, p.353, 358). James Hathaway (2007) notes the following: “the alienage requirement limits refugee status to doubly deserving persons who, by crossing an international border, are now within the unqualified protective competence of the international community” (p.353). For Hathaway (2007), the narrow refugee definition is practical because it identifies specific individuals that the international community has the responsibility to protect (p.353). The requirement that refugees must cross an international border in order to receive protection has been criticized (see Cohen, 2007; Dewind, 2007). For example, Roberta Cohen (2007) argues that internally displaced people often face similar situations as refugees, and that they have not crossed an international border does not mean that they are not vulnerable populations in need of protection (p.371). Furthermore, Josh Dewind (2007) argues that “to claim that refugees lucky enough to cross an international border enjoy the ‘unqualified ability of the international community to respond to their needs’ draws attention away from the regime’s definitional limitations and protective shortcomings [...]” (p.382).

The second element that defines a convention refugee is the type of persecution that these individuals face. In order to qualify for refugee status, EDPs would also have to demonstrate

a fear of persecution due to their race, religion, nationality, political opinion or membership in a social group. According to Stephen Castles (2002) the only way that EDPs could meet this requirement for refugee status would be in a situation where “[...] environmental destruction, such as defoliation or polluting water [...]” is used in an effort to purposefully bring about the forced migration or persecution of a group of people (p.8). An example of this type of environmental persecution would be the environmental destruction and forced migration caused by the use of Agent Orange by the United States during the Vietnam War (Castles, 2002, p.8). Yet, even in this example, the environmental destruction would not be sufficient grounds for granting refugee status. Stephen Castles (2002) notes that refugee status would be afforded in this situation not because the Vietnamese people residing in the countryside were displaced by environmental destruction, but rather because a *specific social group* was persecuted (p.9).

Thus, international refugee law is clear: individuals who seek refuge across international borders as a result of environmental disasters are not eligible for refugee status (Kolmannskog & Myrstad, 2009, p.314; Kibreab, 1997, p.21). Given the limits of the Refugee Convention definition, and the fact that no other international legal status exists that provides protection to the environmentally displaced,<sup>14</sup> it is evident that a protection gap exists in international law for EDPs.

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<sup>14</sup> A document entitled “Operational Guidelines on Human Rights and Natural Disasters” was adopted in 2006 by the Inter-Agency Standing Committee (IASC), and is designed to guide humanitarian responses following natural disasters (Cohen & Bradley, 2010, p.101). However, these guidelines are not applicable to individuals who are displaced as a result of natural disasters and that have crossed an international border (Cohen & Bradley, 2010, p.101-2, 110). Furthermore, while these guidelines are “[...] informed by and draw on relevant international human rights law, existing standards and policies pertaining to humanitarian action, and human rights guidelines on humanitarian standards in situations of natural disaster [...]” (see IASC, 2006, p.10), they do not constitute a legally binding international statute.

In response to this protection gap, the idea of “complementary protection” has evolved (McAdam, 2007a, p.19). According to Jane McAdam (2007a) complementary protection represents an acknowledgement that all people in need of protection do not “[...] fit neatly within legal definitions” (p.19). Complementary protection can be defined as, “ [...] protection granted by states on the basis of an international protection need outside the 1951 Convention Framework”, and it occurs when a number of countries provide protection to non-convention refugees who cannot return to their country of origin at that time (McAdam, 2007a, p.20, 21). For the purposes of this research, complementary protection mechanisms will be defined as those mechanisms that: 1) are based on international protection obligations founded in the non-refoulement norm (a key legal principal in international law) and 2) demonstrate a state’s formal recognition that international protection is needed in exceptional circumstances.

Complementary protection mechanisms come in a number of different forms and names in countries and regions around the world including: “humanitarian protection”, “temporary asylum” (Mandal, 2005, p.2), as well as “temporary protected status” (United States), “persons in need of protection” (Canada), and “subsidiary protection” (European Union) (McAdam, 2007a, p.22). Furthermore, “temporary stay of removals” (also known as “moratorium”) in Canada could be considered a form of complementary protection based on the definition used in this thesis.

While the definition of complementary protection outlined above appears to be relatively straightforward, Ruma Mandal (2005) notes that there is often confusion between the ideas

of providing “complementary protection” versus “temporary protection” (p.3).<sup>15</sup> For the sake of clarity, it is necessary to highlight here the differences between these two concepts. According to Jane McAdam (2007a), temporary protection “[...] describes the (typically European) response of according time-bound, emergency protection to a sudden mass influx of asylum seekers, the size of which would overwhelm standard refugee determination procedures”, whereas complementary protection applies more broadly to individual cases that fall outside the Refugee Convention (p.3). While the Haitian earthquake caused massive internal population displacement, and some out-migration from Haiti, the earthquake did not cause an *overwhelming mass influx* of people into Canada, for example.<sup>16</sup> Therefore, focusing on the complementary protection mechanisms rather than temporary protection mechanisms is more relevant to this research.

## **Transnational Migration, Globalization and the Diaspora**

One of the central questions of this research pertains to the role that the Haitian Diaspora played in influencing Canada’s immigration policies for Haitians in 2010. This question relates more broadly to the study of transnational migration, globalization and the creation of Diasporic communities. Transnational migration is a phenomenon that is associated with the current era of globalization, which has propelled the establishment of Diaspora communities across the globe (Nyberg-Sorensen, Van Hear & Engberg, 2002, p.54; Esman, 2009, p.3). However, it is important to note that “diasporization” is not caused by globalization but

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<sup>15</sup> For more on Temporary Protection see also (EUROPA n.d.; EUROPA, 2001, EUROPA, 2005 and ECRE, 2002).

<sup>16</sup> It is important to point out that according to IOM estimates, nearly 200,000 Haitians crossed the border into the Dominican Republic following the earthquake (IOM-Reliefweb, 2011, par.4), which could be considered a situation of “mass influx”. However, in the Canadian context such a mass influx did not occur, thus it is appropriate to speak of the Canadian response in terms of complementary protection mechanisms.

rather some of the characteristics associated with globalization (for example international migration) assist the development of diasporic communities (Cohen, 1997, p.175). Robin Cohen (1997) articulates this well, noting that “[...] changes in technology, economic organization, modes of travel, production, communication, the movement of ideas or the syncretization of cultures that underpin the process of globalization [...]” are advantageous to the development of diasporic communities (p.175).

Diasporas are defined in several different ways in the literature; however, Steven Vertovec’s succinct definition describes well their transnational character. Vertovec defines the diaspora as:

[...] the term used today to describe practically any population which is considered “deterritorialized” or “transnational” – that is, which has originated in a land other than that in which it currently resides, and whose social, economic and political networks cross the borders of nation-states or, indeed, span the globe” (qtd in Adamson & Demetriou, 2007, p.498).

This definition will be used to define the Haitian Diaspora for the purposes of this research. However, it is important to make the distinction here between members of a Diaspora and migrants. While members of a Diaspora may be migrants or naturalized citizens, migrants or naturalized citizens may not necessarily *choose* to be a part of a Diaspora. Gabriel Sheffer (2003) notes that the distinction between these two categories of people is not well defined, but is determined by whether or not migrants choose to permanently cut ties with their homelands and integrate fully into their host country, or whether they keep in direct contact with their homelands as well as other Diasporic communities, and become actively involved in preserving their “ethno-national identity” in their host country (p.17, 77). Therefore, when referring to the Haitian Diaspora throughout the remainder of the analysis, it is understood

that members of the Haitian Diaspora includes Canadians of Haitian origin (both first generation immigrants and their descendants) who have chosen to maintain ties with Haiti and are actively participating in the preservation of their ethno-cultural identity in Canada (through participation for example in Haitian community groups and activities, etc).

This research focuses on the ways in which Diasporas can play an important role in the politics of their host country. Yossi Shain and Aharon Barth (2003) maintain that Diasporas can organize, and can often have important effects on the foreign policies of their host countries (p.454). For example, the Haitian Diaspora in Canada played a role in the 1970s and 1980s in bringing about a regularization program in the province of Quebec for Haitians in 1981 (McDonald, nd., p.67). Under this program, nearly 4000 Haitians without status living in Quebec were able to access a more secure status in Canada (McDonald, nd., p.67). One Haitian organization that played an active role in bringing about this regularization program was the *Bureau de la communauté haïtienne de Montréal* (BCHM) (McDonald, nd., p.67), which was created in the 1970s to assist new Haitian immigrants in the province (Miller, 1984, p.53). This is a relevant example of the ways in which lobbying on the part of the Haitian community, as well as its different community organizations influenced an important immigration policy decision that affected the Haitian community in the province and has undoubtedly played a role in the growth of the Haitian community in Canada.

Historically, Diasporas have not always been looked upon favourably by their sending countries, and have often represented a group of people exiled from their homeland, unable to return (Adamson & Demetriou, 2009, p.501, Cohen, 1997, p.ix). However, perceptions of nationals living abroad has changed over time, and members of the Diaspora are now viewed

as important actors in domestic and international politics (Adamson & Demetriou, 2007, p.501; Shain & Barth, 2003, p.451). In addition, many “migration-sending countries” have taken a great interest in their country’s Diasporic communities (Adamson & Demetriou, 2007, p.501). This national interest is evident in Haiti, where Haitian governments have made efforts since the mid-1980s to involve Diasporic communities in domestic politics (Laguerre, 1999, p.641). These attempts to include the Diaspora in the affairs of the state are demonstrated by the fact that the Diaspora is known in Haiti as the “10<sup>th</sup> Department” (as Haiti is currently divided into 9 “territorial departments”) (Laguerre, 1999, p.635). In addition, the Haitian government has a Ministry of Haitians Living Abroad (*Ministère des Haitiens Vivant à L’Étranger - MHAVE*), which was directed by Mr. Edwin Paraison at the time of the earthquake (MHAVE, n.d.). The Haitian government has also re-emphasized the importance of the Haitian Diaspora following the earthquake. Former Prime Minister Jean-Max Bellerive even noted the following: “The Diaspora must organize to help us, [...] I have no alternative. They have to be involved in Haiti; they have to be engaged” (qtd in Dewan, 2010, Feb. 4). Given the clear importance of Diasporic communities to the national government in Haiti, it is important to ascertain whether or not this active community of Haitians living abroad was influential in bringing about immigration policy modifications in Canada. This question is addressed throughout the remainder of the analysis.

# **Part I: The Canadian Response - Multi-Dimensional and Multi-Level**

## **Immigration Measures**

At the federal level Canada focused on using multi-dimensional measures that targeted both individuals in Haiti with family ties in Canada, as well as Haitians who were residing in Canada at the time of the earthquake. These measures included speeding up the processing of family class sponsorship applications (received prior to and following the earthquake), permanent residence applications for spouses or common law partners in-Canada, and permanent residence applications for protected persons and their family members (CIC, 2010, June 29).<sup>17</sup> Other measures included allowing temporary residents to extend the time period of their stay in Canada, issuing temporary resident visas or permits, prioritizing work permit applications, and waiving application fees for select categories of applicants (CIC, 2010, Jan. 15; CIC, 2010, June 29). Canada also evacuated more than 200 Haitian orphans following the earthquake whose adoption applications were already in progress in Canada (CIC, 2010, Apr. 1, Operational Bulletin 179C). The evacuation of Haitian orphans is not the primary focus of this research and therefore will not be examined in more detail. Finally, the Refugee Protection Division of the Immigration and Refugee Board of Canada (IRB) expedited the screening process of pending Haitian refugee claims to see if they could be expedited further in the hearing process (IRB, 2010, Mar. 23).

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<sup>17</sup> According to CIC, the term Haiti Special Measures, or “HSM” refers to prioritizing the processing of these applications for permanent residence (CIC, 2010, June 29).

The comparative statistics from 2009 and 2010 for permanent residency for Haitians are evidence of both the increased demand for permanent residency in Canada following the earthquake, and the response of the federal government to this demand. In 2009, the federal government received **4,067 Haitian applications** for permanent residence and **2,085 Haitians were granted permanent residence** in Canada (CIC, 2010, Quarterly Administrative Data – Permanent Residents by Source Country; Applications Received for Permanent Residents). In contrast, in 2010, the federal government received **8,855 Haitian applications**<sup>18</sup> for permanent residency and **4,549 Haitians were granted permanent residence** in Canada (CIC, 2010, Quarterly Administrative Data - Permanent Residents by Source Country; Applications Received for Permanent Residents). Thus, the number of applications for permanent residence from Haitians more than doubled in the year following the earthquake, and the number of Haitians that obtained permanent residency increased by **118%** from 2009 to 2010. These statistics are evidence of a concrete governmental response to a higher demand for permanent residency following the earthquake.<sup>19</sup>

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<sup>18</sup> It is important to note that the statistics regarding Haitian applications for permanent residence in 2010 do not necessarily include all applications for permanent residence made under the Quebec Special Measures program. Under Quebec's humanitarian sponsorship program, **4,384 applications** were submitted up until the program was terminated in July, 2010 (Interview, Chantal Drolet, June 10, 2011, Montreal). These applications represented approximately **8,991 people** applying to immigrate to Quebec (as each of the applications submitted was for approximately 2 people) (Interview, Chantal Drolet, June 10, 2011, Montreal). Individuals making humanitarian sponsorship applications in Quebec must first be issued a Quebec Selection Certificate (CSQs) before applying for permanent residency at the federal level. According to CIC data, 1,162 permanent resident applicants from the Quebec Special Measures program were still in the federal processing inventory as of March 31, 2011 (CIC, 2011, Data Table: Quebec Special Measures – Humanitarian (QSM) – Cumulative Progress as of March 31, 2011 – Progress on QSM Permanent Resident Applications – OHPO/PAP). Therefore, the statistics for permanent residency applications in 2010 do not include all of the applications that will be submitted by individuals who received CSQs, as these selection certificates were still being issued in 2011.

<sup>19</sup> Canada has responded to other emergency situations by offering permanent residency. In 1999, a Humanitarian Evacuation Program was initiated by the UNHCR and the IOM in order to resettle displaced Kosovars (UNHCR, 1999, p.345). Under this program, 7,271 Kosovars were accepted for “**immediate settlement**” in Canada (*emphasis added*, Sherrell, Hyndman, Preniqui, 2004, p.5). The program was designed to provide **temporary protection** to those displaced by the conflict, however Kosovars resettled in Canada were given **the opportunity to remain in Canada permanently** (Sherrell et al, 2004, p.5; UNHCR, 1999, p.345; Treviranus & Casasola, 2003, p.192). It should be noted that 5,051 Kosovars came under a program known as the Kosovar Refugees Emergency Evacuation Program, whereas the other 2,200 Kosovars had

The following section outlines the details of the federal measures adopted, and evaluates whether or not they have lived up to their stated objectives. To begin, the analysis shows that the federal government adopted measures to respond to the Haitian earthquake that worked within existing immigration legislation and mechanisms, but did not attempt to expand or alter existing immigration criteria in any way. Given the scale of this natural disaster, and the fact that Quebec's provincial government did introduce very innovative and "special" measures following the earthquake (to be discussed in Part III), the lack of latitude exhibited federally reflects poorly on the government at the federal level as its approach could be viewed as lacking consideration of the exceptional circumstances. Secondly, it is shown that the Canadian government focused on speeding up processing times in order to facilitate family reunification. This acceleration was effective, as a large percentage of *approved* applicants were reunited with their family members by the end of 2010 and into March 2011. However, this measure was not intended to make it easier for Haitian applicants to apply for family sponsorship, thus a significant number of applications were refused. Thirdly, it is demonstrated that although the fees associated with some applications and documents were waived for Haitians in certain immigration categories, the fee waiver process deviated from the Canadian government's past practice when responding to natural disasters. Given the devastation caused by the Haitian earthquake and taking into consideration the high levels of poverty in the country, a more lenient fee waiver policy would have enabled more Haitians to benefit from the special measures put in place. Finally, the concluding remarks highlight the advantages and disadvantages of using immigration measures as a response to a humanitarian crisis such as the Haitian earthquake, and points to

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relatives in Canada and thus came as a result of the Kosovo Family Reunion Program (also known as the "fast-track family reunification program" (Sherrell et al, 2004, p.5; Treviranus & Casasola, 2003, p.192).

the fact that most immigration measures are not designed to effectively respond to such a crisis. New developments in the realm of refugee protection will also be discussed at the end of this section. It is shown that since the earthquake, a new jurisprudence for Haitian women has been established.

### **A note on statistical data**

Before discussing in detail the measures adopted by the federal government, it is important to say a few words on the lack of clarity and transparency from CIC regarding the statistics publicly available on the number of applications for permanent residency from Haitians. For example, in a December 31<sup>st</sup>, 2010 public notice, CIC noted that it had “cleared” (approved, refused or withdrawn) 98% of the 1,700 permanent resident applications (family class) received before the earthquake (CIC, 2010, Aug. 31st). This statement provides little indication of the number of Haitians who actually received permanent residency in Canada from this group of applicants, and only points to the fact that the applications were looked at and dealt with either positively or negatively.

More specific statistics are available through CIC’s research division. However, these statistics are not readily available to the public online, and must be specifically requested which is a lengthy and costly process. Furthermore, the compilation of these statistics is unclear, making the data difficult to interpret (see Appendices J and K for examples of the data tables provided). In an effort to improve the analysis of the statistical data, I made

several requests for clarification,<sup>20</sup> the bulk of which remain unanswered. The public updates available regarding the measures, as well as CIC's own statistics have left a lot to be desired in terms of providing clear statistical data, and consequently these updates do not adequately sum up the impact of the measures adopted. This finding is unfortunate, as transparency in the statistical data is important in order to highlight and understand the breadth of the measures adopted at the federal level as well as their practical impact. For the purposes of this section, statistics are drawn from CIC's 2010 Quarterly Statistical Data and specific data tables obtained from CIC pertaining to the special measures for Haiti.

### **A Matter of Perspective: Were the Federal Measures Really “Special”?**

On January 16, just four days after the Haitian earthquake, the federal government made an announcement of the “special immigration measures” it was introducing as a response to the devastation caused by the earthquake. However, throughout the course of some interviews with members of the Haitian community in Canada, it became apparent that the “special” nature of the measures was really a matter of perspective.

For example, in an interview with Marjorie Villefranche, Program Director for *Maison d’Haiti*, a Haitian community organization in Montreal, she noted that there really were no “special measures” at the federal level in terms of immigration procedures (Interview, May 5, 2011, Montreal). From her perspective, the federal response was “[...] l’administration comme d’habitude”, and demonstrated a total lack of compassion. Villefranche deemed there

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<sup>20</sup> Two different divisions within CIC compiled the data received. Specific requests for clarification were made to both divisions within CIC; only one of the divisions responded with clarifications.

to be no “special” immigration measures adopted federally as all of the same documents, proofs of identity and fees applied to Haitians seeking family sponsorship as well as those who were submitting permanent residency applications (Interview, May 5, 2011, Montreal).

Another research participant considered to be a representative within the Haitian community also reiterated this perspective on the “special” nature of the measures. Gerard Etienne, a Canadian of Haitian origin and a public servant within the federal government made the following statement regarding the measures that were adopted at the federal level and in Quebec:

I think where I would like to make a differentiation is *that these were not really special measures*, they were part of administrative processes that were fairly easy for the government to do. I think by and large it was the response of bureaucrats, which was absolutely incredible in terms of helping within the rules, but the rules were not changed, the rules were not modified. And as a matter of fact I would say to you, the rules became an impediment to the very desire of facilitating Haitians to come over [...](*emphasis added*; Gerard Etienne, June 27, 2011, Ottawa).

Gerard Etienne specified further noting that some of the rules, for example requiring Haitians to get DNA tests, or the high fees associated with permanent residence applications acted as a significant barrier for Haitians attempting to come to Canada, or attempting to secure permanent residence in Canada. Mr. Etienne’s statement questioning the “special” nature of the measures is particularly interesting given the federal perspective on this topic.

The federal perspective on the adoption of “special” measures to respond to natural disasters is evidenced in a background document produced by CIC on January 20, 2010 regarding Canada’s response in the wake of other natural disasters. Under the “considerations” section of this document it reads:

In general, *special measures are not necessary for dealing with natural disasters*. CIC already has the appropriate legislative and regulatory authority to deal with exceptional circumstances, such as processing applications on Humanitarian and Compassionate Grounds and is well-equipped within existing operations to process priority cases (*emphasis added*; CIC, 2010, Jan. 20 – Overview of Special Measures Taken in Natural Disasters – see Appendix O).

Therefore, the federal government’s own background documents maintain that “special measures are not necessary” and that existing rules and frameworks can be used to respond to devastating natural disasters. Although the Canadian government at the federal level has maintained publicly in its announcements that “special” measures have been introduced (see CIC, 2010, Jan. 16), CIC’s own internal documents make clear that immigration measures introduced following natural disasters should fall within existing rules and legislation.

The sections that follow clearly demonstrate that the Canadian government did use a number of immigration measures in an effort to assist individuals “directly affected by the humanitarian crisis in Haiti” (CIC, 2010, Temporary Public Policy). However, all of the immigration measures used fell within the federal government’s existing “legislative and regulatory authority”, and therefore did not necessarily constitute “special” measures. In addition, the immigration mechanisms that Canada has at its disposal, which outline certain “special” categories of people deserving or in need of protection (protected person status, moratorium on removals, humanitarian and compassionate considerations) did not make up the thrust of the Canadian immigration response following the earthquake (this is discussed in detail in Part II). Nevertheless, the distinctive features of the federal measures adopted included their multi-dimensionality (e.g. several different immigration mechanisms were used in tandem), as well as their focus on speeding up significantly the processing of applications in certain immigration categories.

## **Haiti Special Measures Objective: Speedy Family Reunification**

One of the federal government's primary responses following the earthquake was to prioritize the processing of certain immigration applications whereby the applicants self-identified "as being directly and significantly affected" by the earthquake in Haiti (CIC, 2010, Jan. 16). The following applications were to be prioritized as part of Canada's Haiti Special Measures: family sponsorship applications (submitted prior to and following the earthquake), permanent residence applications for spouses or common law partners in-Canada, and permanent residence applications for protected persons and their family members (CIC, 2010, June 29). For applications made under the family class following the earthquake, the goal was to process these applications within a 12-week timeframe<sup>21</sup> (Interview, Public Servant from CIC, May 24, 2011, Ottawa).

### **Federal Pilot Processing Office Created to Process Family Class Applications Within a 12-week Timeline**

In the days following the earthquake, the federal government created the "Ottawa Haiti Processing Office – OHPO" in order to assist in expediting permanent residence applications made by Haitians. As of April 1, 2010 the OHPO was responsible for processing applications under the following categories: 1) family class, 2) dependents of protected persons, 3) "successful appeals to the Immigration Appeal Division", 4) applications that were made under Quebec's special program, and 5) "early admission cases" (defined as individuals who received a Temporary Residence Permit during the evacuation phase following the

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<sup>21</sup> In a follow-up email (October 19, 2011), the respondent from CIC specified that this 12-week processing commitment "[...] applied to Family Class, Humanitarian and Compassionate Class, Refugee Dependents Abroad and the Québec Special Measures Cases (QSM)."

earthquake)(CIC, 2010, June 29; CIC, 2010, Apr. 1, Operational Bulletin 179B). According to a public servant from Citizenship and Immigration Canada, the primary objective of the office was to speed up the processing of applications in order to facilitate family reunification, and to provide assistance to the Embassy in Port-au-Prince (Interview, Public Servant from CIC, May 24, 2011, Ottawa). This research participant pointed to the uniqueness of the special processing office, as its staff was working directly in conjunction with the visa section in Port-au-Prince on the processing of applications under the family class. In other words, both the visa section in Port-au-Prince as well as the OHPO in Ottawa could act on the different applications to move them forward. According to my research participant, this type of joint collaboration on the processing of applications by offices in two different countries is something that has never been done before. Secondly, the office in Ottawa was unique as it was responsible for processing applications from clients who were abroad in Haiti rather than in Canada. Typically, Canadian offices do not process applications from clients who are abroad (Interview, Public Servant from CIC, May 24, 2011, Ottawa).

The creation of a specialized processing office is important, as it is evidence of a concrete action taken by the federal government in order to actively work towards processing certain applications from Haitians in an efficient manner and within a 12-week timeframe. The office continues to exist to this day, and its end date has not been determined (Interview, Public Servant from CIC, May 24, 2011, Ottawa).

The public servant from CIC that was interviewed pointed to some of the challenges of making decisions on the applications within a 12-week timeline. Referring to files under the

family class, the research participant noted that under normal circumstances application-processing times could take from 18 to 21 months (Interview, Public Servant from CIC, May 24, 2011, Ottawa). Thus the federal measures strived to reduce the normal processing procedures under the family class by 15 to 17 months. To process the applications within a 12-week timeframe was difficult due to problems the applicants had in obtaining the necessary documentation, as well as the fact that the processing office was newly created with staff who were not experienced in processing files from overseas clients (Interview, Public Servant from CIC, May 24, 2011, Ottawa). In addition, the research participant indicated that procedures or guidelines to process the applications in such a tight timeframe *were not* available to assist new employees as the accelerated processing model used for these applications was entirely new (Interview, Public Servant from CIC, May 24, 2011, Ottawa).

Despite the challenges in accelerating the treatment of applications under the family class, my participant from CIC noted that the department's processing commitments were met by their respective deadlines in the majority of cases (Interview, Public Servant from CIC, May 24, 2011, Ottawa; see also: CIC, 2010, Jan. 7). Statistics are the true test of whether or not the accelerated processing measures lived up to their objective to facilitate rapid family reunification, a point to which I now turn.

## Family Reunification for Approved Family Class Applicants Achieved

Under the Haiti Special Measures<sup>22</sup>, **4,449 permanent residence applications**<sup>23</sup> were processed between January 13, 2010 and March 31, 2011. Of these applications, **2,460** were approved, **1,412** were refused and **577** were withdrawn – resulting in an acceptance rate of **64%**. Another 1,128 applications were received after August 31, 2010 under a category known as the “Post Haiti Special Measures”. Of these applications **684** were approved, **348** were refused and **96** were withdrawn – resulting in an acceptance rate of **66%**. Therefore, in total under the Haiti Special Measures and the Post-Haiti Special Measures, a total of **5,577** applications for permanent residence were processed, **3,144** applications were approved, **2,433** applications were refused, and **673** applications were withdrawn (CIC, 2011, Data Table: Overall Permanent Resident applications Progress between January 13, 2010 and March 31, 2011 – OHPO/PAP (In Persons)). As of March 31<sup>st</sup>, 2011 CIC data reports that 3,106 people total have been admitted to Canada in these two categories (Haiti Special Measures and Post-Haiti Special Measures) – meaning that nearly 99% of the Haitian applicants that were approved in these categories have arrived in Canada (CIC, 2011, Data Table: Preliminary Admissions of Applications Approved for Permanent Resident Application Processed in OHPO/PAP since the Earthquake In Persons, see Appendix J). Furthermore the bulk of these admissions (2,669 or 86%) occurred in 2010 (Ibid).

Therefore, it can be concluded that this measure introduced by the federal government did live up to its stated objective of accelerating the processing of applications, and thereby the

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<sup>22</sup> Does not include applications from the Quebec Special Measures

<sup>23</sup> These included Family Class (FC), Family Class on Humanitarian and Compassionate grounds (FCH) and Protected Persons (DR2) received before September 1, 2010 (when the federal special measures officially came to a close)(CIC, 2011, Data Table: Overall Permanent Resident applications Progress between January 13, 2010 and March 31, 2011 – OHPO/PAP (In Person)).

family reunification process. The fact that **99% of the approved applicants** for permanent residency under the federal Haiti Special Measures were admitted to Canada as of March 31, 2011 is significant, and is evidence that the goal of accelerating family reunification **for approved applicants** was achieved. However, these statistics also reveal the ultimate purpose of the measure adopted, as it is clear that this measure was not intended to make it easier for Haitians to be approved for permanent residency to Canada. Had this been the goal of the measure, the application approval rates would have been higher than 66%. It should also be noted that “withdrawn” applications are not included in the category of “refused applicants”. According to CIC, applications under the Haiti Special Measures were withdrawn (by CIC) when an applicant did not “provide the requested information or comply with CIC requests, such as submitting to medical or DNA testing within the requested timeframe” (CIC, 2010, Aug. 31). A CIC Memorandum entitled “Haiti Exit Strategy” (see Appendix N) highlighted the difficulties in processing the applications within the 12-week “processing commitment” due to a “lack of client compliance” (CIC, ATIP Request, p.753). The background section of this document noted the following:

Some applicants are not completing immigration medical exams or DNA testing in an expeditious manner; they are failing to submit the proper fees; or they are not attending scheduled interviews. As a result, CIC has started to withdraw these applications after dutifully making repeated requests to the clients (CIC, ATIP Request, p.754).

Based on this document, it appears as though there was a greater federal focus on meeting the stated “processing commitment” of 12 weeks (meaning to make a positive or negative decision on an application), rather than taking into consideration the exceptional circumstances and the difficulties that certain clients were facing in meeting some of the requirements. When the numbers of withdrawn cases are added to those applications that

have been refused, it means that more than 1 in 2 applicants (or 55.6%) under the Haiti Special Measures were refused/withdrawn by CIC.

## **Measures for Temporary Residents and Temporary Entry**

### **Haitian Temporary Residents Allowed to Extend Their Status**

The Canadian government also made certain accommodations for Haitians who are temporary residents, by allowing them to apply for an extension of their temporary status, by expediting the processing of these applications (CIC, 2010, Jan. 16), and by exempting them from paying the fees associated with extending their temporary status (CIC, 2010, Temporary Public Policy).<sup>24</sup> According to CIC, 80 temporary resident permits and extensions were granted within Canada between January 13, 2010 and March 31, 2011. In addition, 424 visitor's visas were granted *in Canada* (CIC, 2011, Data Table: Haiti Special Measures (In Persons) Temporary and Permanent Resident Family Class – Permits and Authorizations In Canada).

The federal government also made accommodations for Haitians applying for work permits, as they did not have to “[...] present a valid Labour Market Opinion from Service Canada [...]” and were also exempt “from restrictions against applying for a work permit from within Canada” (CIC, 2010, Temporary Public Policy). According to CIC data, 6,945 work permits were issued to Haitians in Canada between January 13, 2010 and March 31, 2011

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<sup>24</sup> Document on file with the author. Document retrieved through an *Access to Information* request.

(CIC, 2011, Data Table: Haiti Special Measures (In Persons) Temporary and Permanent Resident Family Class – Permits and Authorizations In Canada).

### **Select Haitians Authorized for Temporary Entry to Canada**

The federal government also issued a number of temporary resident visas and permits to Haitians, which enabled their temporary entry into Canada following the earthquake. Haitians that received temporary resident permits (TRPs) and visas (TRVs) had the fees that are associated with these documents waived (this is discussed in more detail in section *Fees Waived in Limited Categories*)(CIC, 2010, Temporary Public Policy). According to a background document produced by CIC on Canada’s response following past natural disasters, the issuance of “temporary resident visas for persons personally and seriously impacted by the disasters” is typically one of CIC’s primary responses in the wake of any natural disaster (CIC, 2010, Jan. 20 – Overview of Special Measures Taken in Natural Disasters).

A TRV or “visitor’s visa” is granted to individuals visiting family members, or those individuals who are coming to Canada for vacation or business purposes (CIC, 2011, Visiting Canada, p.2). Applicants who wish to obtain a TRV must demonstrate that they “meet the requirements” under the IRPA and the IRPR (CIC, 2011, Visiting Canada, p.2). There are two different types of visitor’s visas – single entry and multiple entry visas. A single entry TRV is typically valid for a period of 6 months, but the expiry date may be extended by an immigration officer (CIC, 2011, Visiting Canada, p.28). In contrast to the TRV, a TRP may be granted to an individual at the discretion of an immigration officer in

any circumstance that is deemed to be “exceptional” (CIC, 2010, p. 3). An individual that is granted a TRP is generally someone “[...] who is inadmissible or does not meet the requirements of the Immigration and Refugee Protection Act or Regulations either as a temporary resident or as a permanent resident to enter or remain in Canada” (CIC, 2010, p. 3; also in Interview, Public Servant from CIC, May 24, 2011, Ottawa). Similar to the moratorium or removal mechanism, TRPs can be revoked at any time (CIC, 2010, p. 3).

Between January 2010 and March 31, 2011, **3,092 temporary resident visitor’s visas**, and **616 temporary resident permits** had been issued for Haitians, granting these individuals the opportunity to enter Canada temporarily (CIC, 2011, Data Table: Getting to Canada – Total Documents Issued – Visas Issued and Permits Approved – OHPO/PAP (In Persons)). According to the research participant from CIC, the majority of these visas and permits were granted in the weeks following the earthquake during the evacuation phase, and many of these visas and permits were granted to dependants of Canadian citizens (Interview, Public Servant from CIC, May 24, 2011, Ottawa). In addition to the visitor’s visas and permits issued following the earthquake, temporary resident visas were issued to 175 students and 22 temporary foreign workers in the same time period (CIC, 2011, Data Table: Getting to Canada – Total Documents Issued – Visas Issued and Permits Approved – OHPO/PAP (In Persons)). Therefore, in total, **3,905 temporary resident visas and permits** were issued to Haitians from January 2010 to March 31, 2011.<sup>25</sup>

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<sup>25</sup> Of the temporary resident visas and permits issued following the earthquake (for individuals otherwise ineligible to enter Canada under the IRPA or the IRPR), **204** of these were issued to the **Haitian orphans** that were evacuated from Haiti in the weeks following the earthquake (Interview, Public Servant from CIC, May 24, 2011, Ottawa). Certain refugee dependants were also granted permits in order to enter Canada to complete the application process from within Canada instead of from Haiti. For example, in cases where an asylum seeker in Canada had already been recognized as a refugee, but had not yet been granted permanent residency, their dependant children who remained in Haiti were evaluated based on admissibility criteria and were issued a

The issuance of 3,905 temporary resident visas and permits is a significant gesture on the part of the federal government. Although these visas and permits are supposed to be “temporary”, it is evident that enabling these Haitians to enter Canada where there currently exists a moratorium on removals for Haiti would offer these individuals long-term protection. Me Isabelle Dongier (a lawyer who worked closely with members of the Haitian community in Montreal providing pro bono legal services following the earthquake) emphasized this idea, noting for example that when visitors visas were issued to Haitians in Port-au-Prince following the earthquake, it was clear that the Canadian relatives of these individuals would try to keep them in Canada permanently through family sponsorship mechanisms (Interview, April 5, 2011, Montreal).

Although the temporary entry measures represent a response taken by the federal government, these measures were not without their flaws. The following section examines these flaws, which include the lack of a permanent solution to the temporary status, and the arbitrary issuance of temporary permits and visas following the earthquake.

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permit to enter Canada and complete the family reunification process here (Interview, Public Servant from CIC, May 24, 2011, Ottawa).

## **Shortcomings of the Measures for Temporary Residents and the Measures Granting Temporary Entry**

### ***Lack of Solution to the Expiry of a Temporary Status***

While the temporary entry of a limited number of Haitians to Canada following the earthquake under temporary resident visas and permits was welcomed by certain members of the Haitian-Canadian community, the lack of solution to their temporary status became problematic when visas issued for a period of 6 months began to expire (Interview, Marjorie Villefranche, May 5, 2011, Montreal). In response to this expiry problem, Haitians who received a TRV (valid for 6 months) or a TRP (valid for 1 year) following the earthquake, were advised by CIC in August 2010 that they should apply for an extension of their status at a fee of \$75 if their temporary status has not yet expired, or at a fee of \$200 if their status has expired and they were “out of status” (CIC, 2010, Aug. 18).

### ***Visas and Permits for Temporary Entry Issued Arbitrarily***

Another problem associated with enabling the temporary entry of some Haitians following the earthquake was the seemingly arbitrary way in which temporary visas or permits were accorded following the earthquake. Me Isabelle Dongier noted that one thing that was frustrating for Haitians in Canada were the inconsistencies, or exceptions that were made in issuing visitor’s visas to Haitians (Interview, Me Isabelle Dongier, April 5, 2011, Montreal). Me Dongier noted that immediately following the earthquake, if a Canadian who either went to Haiti after the earthquake to locate family members, or who happened to be in Haiti at the time of the earthquake went to the Canadian embassy in Port-au-Prince with family members

in an effort to get visas for them, they were often granted one (Interview, Me Dongier, April 5, 2011, Montreal). However, she noted that in the weeks following the earthquake, more and more requests of this nature were being refused (Interview, Me Dongier, April 5, 2011, Montreal). Offering a solution to this inconsistent approach, Me Dongier noted the following:

Donc, je pense ce qu'on aurait pu faire c'est être plus juste, ou être plus équitable, et si on décidait de donner des visas de visiteur aux membres de la famille de Canadiens pour leur permettre de sortir tout de suite quitte à ce que les procédures de parrainage soient faites plus tard ici, on aurait pas dû le faire au goutte à goutte, ou un cas oui, un cas non. Ça aurait dû être constant (Interview, April 5, 2011, Montreal).

In conclusion, enabling a certain number of Haitians with family ties in Canada to enter the country on temporary visas and permits was a positive gesture made by the federal government. This act enabled the federal government to provide some measure of assistance and protection to individuals who were directly affected by the earthquake in Haiti. In addition, given the moratorium on removals for Haiti that has existed in Canada since 2004, it is unlikely that these individuals will be removed to Haiti in the near future, which affords them a greater opportunity to remain in Canada permanently. However, only a select number of Haitians benefitted from this measure during the evacuation phase following the earthquake, and the approach of the federal government with respect to the issuance of these visas could be viewed as inconsistent.

Another measure adopted federally was to waive some immigration fees. The following section underlines the fees that were, and were not waived. It is demonstrated that although the waiving of certain immigration fees was a positive gesture, the fees that were not waived

were quite high and acted as a significant barrier for Haitians attempting to benefit from the immigration measures put in place.

### **Fees Waived in Limited Categories**

« C'était comme si c'était un leurre [...]. On a présenté quelque chose qui n'était pas accessible finalement. »

(Interview, Marlene Rateau, July 20, 2011, Montreal)

The federal government waived application and processing fees in certain immigration categories as part of the measures for Haiti following the earthquake. Fees were waived for individuals “directly affected” by the earthquake that required a temporary visa or permit or that had applied for an extension of their temporary resident status in Canada (CIC, 2010, Temporary Public Policy – See Appendix P). In addition, fees were also waived for individuals requiring a [...] work permit, study permit, permanent resident travel document, or an authorization to return to Canada” (CIC, 2010, Temporary Public Policy). The fees associated with the various immigration documents and statuses exempted by CIC range from \$50 for a permanent resident travel document, to \$200 for a restoration of temporary resident status, to \$400 for an authorization to return to Canada (see for more information CIC, 2011, Mar. 08; see also IRPR Part 19). While the fee waiver for certain immigration categories appears to be a “special” measure, the Minister of Citizenship and Immigration Canada has the authority under section 25 of the IRPA to allow for “[...] an exemption from any applicable criteria or obligations [...]” of the IRPA “[...] if the Minister is of the opinion that it is justified by public policy considerations” (IRPA, Section 25.2 (1)). In order to have the fees waived in certain immigration categories for Haitians, Minister of Citizenship and

Immigration Canada Jason Kenney signed a temporary public policy according to his authority under Section 25 of the IRPA (CIC, 2010, Temporary Public Policy). Therefore, the waiving of fees via a temporary public policy is a measure that is already accounted for under the IRPA legislation, and thus does not constitute a “special” measure.

Although fees were waived in the abovementioned categories, the fees associated with applications for family sponsorship, permanent residency, and permanent residency under humanitarian and compassionate considerations were not waived. These fees<sup>26</sup> are quite high and most likely prevented some Haitians from applying under these categories. For example, these fees range from \$75 for the sponsorship application fee and \$475 for the principal applicant (spouses and common law partners) to \$550 for the principal applicants that are non-spouse or common law family members (CIC, 2011, Mar. 08). In addition, in order to acquire permanent residency, applicants must pay the Right of Permanent Resident Fee (RPRF), which is \$490 (CIC, 2011, Mar. 08).

CIC documents reveal the justifications for waiving certain immigration fees. A March 04, 2010 Decision Memorandum for the Minister of Citizenship and Immigration Canada noted the following:

The fee exemptions were implemented for a number of reasons including as a ***humanitarian gesture recognizing the economic impact of the crisis, the initial lack of access to banking facilities, the potential threat to persons waiting outside of our mission believed to have money and the threat to our mission from criminal elements if funds were continued to be handled.*** [...] The fee exemption was also extended to certain temporary residents of Canada who may have had to extend their stay in Canada but did not have the funds to pay for extensions (*emphasis added*; CIC, ATIP Request, p.748).

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<sup>26</sup> See (CIC, 2011, Mar. 08) for a detailed overview of the fees that apply for citizenship and immigration services in Canada.

The reasons outlined demonstrate the federal government's focus on "economic impact of the crisis" in Haiti, and Haitian nationals who may not have had access to their banks, or could be put at risk while waiting outside the Canadian embassy, or were in Canada and could not pay to extend their stay. However, it is clear that consideration was not given to the financial capacity of the target population of family sponsors in Canada. Given the portrait painted by CIC of the economic situation in Haiti, it would be reasonable to infer that the fees associated with family sponsorship and permanent residency (fees that were not waived) would become the responsibility of the Haitian Canadians hoping to bring their close relatives to Canada. Statistics Canada reported that 39% of Canadians of Haitian origin found themselves in "low-income situations" in 2000 (Statistics Canada, 2007). Thus, it is evident that the financial capacity of potential sponsors in Canada was not given adequate consideration when the federal government was implementing immigration fee waivers.

In addition, although the fees associated with sponsorship applications and permanent resident applications were not waived following the earthquake, past practice indicates that these fees have been waived following other devastating natural disasters in recent history. Interestingly, a document obtained from an *Access to Information* request notes the following:

Under ***extremely exceptional circumstances only***, such as the emergency situations of the 2004 Asian Tsunami and the Earthquake in South Asia, and the 2006 Lebanon Crisis, CIC responded by adopting the special measures of expedited processing ***and waiving the relevant processing fees, both for temporary and permanent residence, including the Right of Permanent Residence Fee (RPRF)***, where it had not been paid (*emphasis added*; CIC, 2010, Jan. 20 – Overview of Special Measures Taken in Natural Disasters).

This differential treatment by the federal government of Haitians following the 2010 earthquake, and those individuals affected by the 2004 Asian Tsunami is problematic, as it is difficult to understand why the earthquake in Haiti, which would be considered by most an “extremely exceptional circumstance”, did not bring about the waiving of fees under the family sponsorship and permanent resident categories as in the case of the 2004 Tsunami.

One reason could be that waiving fees for applicants following the 2004 Asian Tsunami versus waiving fees for applicants following the Haitian earthquake varied due to the differences in the number of people who would benefit from these fee waivers. According to CIC documents, only 366 permanent resident visas were issued and 278 individuals obtained permanent residence between December 27, 2004 and June 7, 2005 as a result of Canadian government efforts to assist individuals directly affected by the Tsunami with family reunification in Canada (CIC, 2010, Jan. 20 – Overview of Special Measures Taken in Natural Disasters). In comparison, **4,549** Haitians were granted permanent residence in Canada in 2010 alone (CIC, 2010, Quarterly Administrative Data – Permanent Residents by Source Country). Gerard Etienne noted that the waiving of fees was one measure that he was advocating following the earthquake, and that the fee waivers that were introduced were purely “cosmetic”. He also noted the following: “[...] the fees have become one of the major stumbling blocks for many people. You have no idea folks who have gone and borrowed money that they will never be able to pay, at interest rates that should be made illegal [...]” just in order to pay the fees necessary for themselves as well as for members of their families to immigrate to Canada or obtain permanent residency status (Interview, Gerard Etienne, June 27, Ottawa). The fact that the fees are acting as a significant barrier for Haitians that are attempting to benefit from the special measures is important, as it leads one to question the

purpose of introducing immigration measures to respond to a crisis situation, when the targeted beneficiaries of these measures have a hard time benefitting due to the high processing costs.

It is problematic that the fee waivers following the earthquake differed from the Canadian government's past practice in response to natural disasters where more immigration fees were waived (for example the 2004 Asian Tsunami). Furthermore, the waiving of immigration fees for Haitians entering Canada is a measure that is within the authority of the Minister of Citizenship and Immigration Canada, as it is legislated within the Immigration and Refugee Protection Act. Therefore, this measure is yet another example of the ways in which the federal government worked within the existing legislation to put in place measures to assist Haitians coming to Canada following the upheaval of their country.

### **Immigration Mechanisms: Inefficient Tools for Disaster Response**

Based on the analysis presented, it is clear that a variety of existing immigration measures were put in place at the federal level to respond to the devastation caused by the Haitian earthquake. While these measures undoubtedly benefitted a certain number of Haitians, there are advantages and disadvantages to using traditional immigration mechanisms to respond following a natural disaster.

The advantages are that immigration mechanisms offer a long-term solution for the beneficiary. Even Canada's temporary entry measures used following the Haitian earthquake had long-term potential due to the existence of Canada's moratorium on removals for Haitian

nationals (to be explored in Part II). In other words, those Haitians that entered Canada on a temporary premise will not be returned to Haiti when their status expires because of the moratorium designation.

In contrast, there are a number of disadvantages to using immigration mechanisms to respond to a devastating natural disaster such as the Haitian earthquake. Most importantly, the rules that accompany immigration measures are not only cumbersome, but also render the application process lengthy. Under normal circumstances, the rules and regulations of the immigration system are positive in that they ensure that individuals immigrating to Canada permanently have been thoroughly vetted. However, in a crisis situation such as the one experienced in Haiti in 2010, the normal immigration rules and regulations are not flexible enough in order to efficiently and adequately respond to such a crisis. In addition, immigration decisions are discretionary by nature, which leads to a lack of consistency in the determination process. In this sense, using immigration measures to respond to a humanitarian crisis may not be the most effective way of offering prompt, uniform protection and relief to those who have been most affected. Throughout the interview process with leaders within Canada's Haitian community, the point was reiterated several times that the immigration rules themselves were not changed (Interviews: Gerard Etienne, June 27, 2011, Ottawa; Marjorie Villefranche, May 5, 2011, Montreal), which had a significant impact on the number of people who could actually benefit from the special measures.

In an attempt to respond more promptly using immigration measures, the federal government prioritized processing, and endeavored to process certain applications within a 12-week timeframe (CIC, 2010, June 29; CIC, 2010, Apr. 1, Operational Bulletin 179B). While this

measure was helpful in accelerating the process, this still represents a three-month wait for the applicant from Haiti just to have their application either approved or denied. In a crisis situation, three months undoubtedly feels like an eternity.

Finally, the issue of immigration fees represents an important area of critique of the measures put in place for Haitians in 2010. Although certain fees were waived (for example for temporary resident extensions), other fees (for example family sponsorship application fees, and the right to permanent resident fees) were not waived (CIC, Jan. 21, Temporary Public Policy). The fact that only a limited number of fees were waived is significant, given that Haiti is “[...] the poorest country in the western hemisphere [...]” (DFAIT, 2009, par.4). Following a natural disaster such as the earthquake, where many Haitians lost their jobs, their homes and all of their possessions, it is difficult to understand why fees would not be waived in more immigration categories in order to enable Haitian applicants and their family members in Canada to benefit from the measures put in place.

Thus, I would conclude that using special immigration measures following the earthquake in Haiti benefitted a certain number of Haitians for the long term; however, it is clear that immigration measures, without being modified to take into consideration the context of the situation, are not necessarily the most appropriate tools to use in response to a humanitarian crisis.

## **Refugee Status**

While the Canadian government placed emphasis on accelerating processing within certain immigration streams for Haitian applicants (for example the family class) measures were also taken in the area of refugee protection to accelerate screening processes. The following section outlines the measures taken by the Immigration and Refugee Board of Canada (IRB) and examines whether or not Haitians displaced by the earthquake were eligible for refugee status in Canada. It is demonstrated that although refugee status is typically not accorded in the wake of environmental disasters, the Haitian earthquake has brought about a change in the jurisprudence for **Haitian** women who are claiming refugee status based on their fear of rape.

### **Accelerated Screening and Processing of Pending Haitian Refugee Claims**

Following the earthquake, one of the measures put in place by the Refugee Protection Division of the IRB was to “accelerate the screening of all pending unscheduled Haitian refugee claims to determine whether they can proceed through the expedited interview process” (IRB, 2010, Mar. 23). In other words, the IRB was expediting the screening process of refugee claims to see if they could be expedited further in the hearing process. The IRB typically uses three mechanisms for processing refugee claims: 1) the “fast-track expedited process”, 2) “fast-track hearing” and 3) full hearing (IRB, 2010, Feb. 15). Fast track hearings are reserved for cases considered to be relatively “simple” and full hearings are reserved for more complex cases (IRB, 2010, Feb. 15). The expedited process is typically used for claims that are submitted from foreign nationals from designated countries (for example Haiti)

(IRB, 2010, Feb. 15). The process is expedited as the claimant is interviewed first by a “refugee protection officer” rather than an IRB board member who is eligible to make a decision on the claim (IRB, 2010, Feb. 15). If the refugee protection officer makes a positive recommendation on the claim, then the decision maker (IRB board member) is left to decide whether or not the applicant’s claim will be accepted, or if the applicant must undergo a full hearing (IRB, 2010, Feb. 15).

According to Me Alain Vallières, the IRB put in place a fast track expedited process for Haitians following the earthquake whereby Haitians whose applications did not have any credibility issues, as well as single Haitian women were eligible to have their applications expedited following the earthquake (Interview, Alain Vallières, May 5, 2011, Montreal). Furthermore, Me Vallières noted that following the earthquake there was also a large number of non-expedited cases (full hearing cases) that went before the IRB. Within his own practice, Me Vallières noticed a marked increase in the number of hearings for his Haitian clients following the earthquake. The fact that the number of hearings (both expedited and full hearing) for Haitians increased significantly in the weeks following is evidence that the Refugee Protection Division of the IRB was placing emphasis on Haitian asylum claims and was prioritizing these claims as they promised to do. In addition, Gerard Etienne who worked closely with the IRB following the earthquake on the prioritization of urgent refugee claims (for example where the refugee claimant’s dependent children in Haiti were left without a guardian following the earthquake), also attested to the “magnificent” response of the IRB in terms of processing certain claims on a priority basis (Interview, June 27, 2011, Ottawa).

The accelerated processing for the initial screening of pending refugee claims was significant due to the large backlog of Haitian refugee claims that existed prior to the earthquake. According to CIC, 9,944 refugee claimants<sup>27</sup> from Haiti were present in Canada on December 1, 2009, with Haiti representing the 2<sup>nd</sup> top source country of refugee claimants present in that year (CIC, 2009a, p.103). Me Vallières noted that because of the existence of a moratorium on removals for Haitian nationals since 2004, there was a long delay in the treatment of Haitian refugee claims prior to the earthquake. The existence of a moratorium (and the fact that refused Haitian refugee claimants would not be sent back to Haiti) meant that there was less of an urgency to treat Haitian refugee claims, and a greater priority was placed on examining claims where the applicant may or should return to their country of origin (Interview, Me Alain Vallières, May 5, 2011, Montreal). The problem with this long delay is that refugee claimants can only apply for permanent residence in Canada once they have been granted refugee status. Once they have received permanent resident status they can apply to be reunited with their family members who may remain in their country of origin (CCR, n.d. a, p.1). Therefore, following the earthquake, although the moratorium on removals continued to exist, there was a greater urgency to process the pending refugee claims so that these individuals (if accepted) could potentially be reunited with their family members who found themselves in a difficult humanitarian situation. According to CIC background documents, “during 2010, 4,563 Haitian refugee claims were finalized, with 2,490 being accepted” (CIC, ATIP Request, p.726).

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<sup>27</sup> Refugee claimants have requested refugee status, but have not yet been accorded refugee status (CIC, 2009b, p.116).

In speaking with Mr. Gerard Etienne, who worked closely with refugee claimants in Canada following the earthquake, he noted that what he expected for the 9,000 plus Haitian refugee claimants was that they would be granted amnesty by the government. Such an amnesty would enable them to integrate more quickly into Canadian society (Interview, Gerard Etienne, June 27, 2011, Ottawa), in addition, this would have given these individuals greater opportunities to eventually reunite with their immediate family members who may have been residing in Haiti at the time of the earthquake. Because the Haitian government was destroyed as a result of the earthquake, Etienne noted that refugee claims made because of political persecution were not relevant anymore. However, given that refused refugee claimants were not going to be sent back to Haiti by the Canadian government, Etienne suggested that an amnesty would have been a good solution for these individuals. This point is very important given the existence of the moratorium on removals for Haitian nationals in Canada. When Haitian refugee claimants have their claims denied, they are not sent back to Haiti because of the moratorium status. Their only recourse is to apply for permanent residence based on humanitarian and compassionate (H&C) grounds after they have been residing in Canada for a few years and have become more established. However, the H&C process is not an easy one and can take years before a decision has been reached during which time H&C applicants are not able to reunite with their family members (Bradley, 2010, p.394; Goldring, Berinstein and Bernhard, 2009, p.252; CCR, 2006). I would hypothesize that Canada's moratorium on removals will not be rescinded in the near future, especially since Haitians have been protected under this status since 2004. Therefore, Mr. Etienne's suggestion of providing amnesty to refugee claimants with appropriate documentation is one that is worthy of consideration, and may prove to be beneficial not

only for the refugee claimants themselves, but also for the Canadian government, as it could avoid a lengthy H&C process in many cases.

Therefore, based on this elaboration, the testimonies made by research participants involved in both representing refugee claimants as well as petitioning the IRB regarding accelerating processing, and the statistics on the number of Haitian claims finalized in 2010, it is clear that the IRB did take concrete actions to meet its stated commitment to accelerated screening and processing of pending Haitian refugee claims. These actions are significant not only because of the large backlog of claims from Haitian refugee claimants, but also because accelerated processing of these claims would enable these individuals (in cases where a positive decision was granted) to start the process of reuniting with their immediate family members. In this sense, treating these claims on a priority basis would enable more Haitians to come to Canada in the future. In addition, although the claim of political persecution was less and less relevant as a basis for claiming refugee status following the earthquake, and no decision was made to provide amnesty to over 9,000 Haitian refugee claimants, there were some interesting developments made following the earthquake for Haitian women claiming refugee status based on their gender as is shown below.

### **New Jurisprudence for Haitian Women Claiming Refugee Status Based on Their Gender**

As previously mentioned, individuals who have been displaced within their own country by natural disasters and who seek refuge across international borders are typically not eligible for refugee status (Kolmannskog & Myrstad, 2009, p.314; Kibreab, 1997, p.21). It is

important to note that following the Haitian earthquake the number of refugee claims from Haiti did not increase dramatically; in fact, the number of claims made by Haitians decreased by 26% since 2009 (from 1,436 claims in 2009 to 1061 claims in 2010) (CIC, 2010, Quarterly Administrative Data - Top 10 Source Countries - Refugee Claims at All Offices (in Persons)). However, the Haitian earthquake has brought about some interesting developments in Canada within the domain of refugee law as it applies to Haitian women who fear returning to Haiti due to the high incidence of rape and sexual violence against women in the country. The following section highlights the ways in which the Haitian earthquake, and the dire situation in Haiti (especially for women) have created a new precedent for Haitian women in the refugee determination process.

According to Me Alain Vallières, refugee claims made following the earthquake by Haitian women based on their fear of rape (due to their membership in a social group – as women), were problematic because the jurisprudence indicated that « rape » was not considered a criteria for granting refugee status to Haitian women. As a result, the decisions on these refugee claims varied amongst board members making decisions on the claims. The lack of jurisprudence on this issue was challenging because of the situation in Haiti following the earthquake whereby women were increasingly more susceptible to sexual violence (Interview, Me Vallières, May 5, 2011, Montreal). Despite the lack of jurisprudence with respect to the claims of Haitian women based on their fear of rape and sexual violence, there have been a few cases and decisions since the earthquake that are evidence of an emergent tendency in granting refugee status for Haitian women.

A positive decision was made in one of these cases roughly one month following the earthquake in Haiti, on February 10, 2010. The claim<sup>28</sup> was for a Haitian woman and her minor daughter (a U.S. citizen). The primary basis for the claim was that due to their membership of a particular social group (women) as well as their political opinion they would be persecuted if returned to Haiti, and might also face a risk to their lives or risk of cruel treatment and/or torture (Section 1).

In assessing this claim, the IRB board member noted the following: “The determinative issue in this case is the assessment of the principal claimant’s *subjective and objective fear of being raped, and consequently of being persecuted because she is a woman, if she had to return to Haiti?*” (*emphasis added*, Section 10). During the review of her case, the claimant noted that since the earthquake occurred in Haiti many of her family members were homeless, and individuals living in tents on the streets were vulnerable to violence, and rape (Section 15). Furthermore, she stated her own fear of being raped if she returned to Haiti, and the IRB cited the documentary evidence of rape against women in Haiti in making the decision (Sections 15, 17, 18). The IRB rendered a positive decision in the principal applicant’s refugee claim based on the fact that her fear of being raped if she returned to Haiti was “well-founded” because she could not receive adequate protection from Haitian authorities given the internal conditions in the country (Section 33).

This case was the first positive decision *granted following the earthquake* to a Haitian woman who feared persecution (and more specifically rape) in her home country due to her

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<sup>28</sup> X (Re), 2010 CanLII 27719 (IRB)

gender. This case is significant as the internal conditions in Haiti following the earthquake were cited as affecting the stability and security of the country, and therefore the applicant's ability to receive protection in her home country (Section 31). The *Dezameau* case is an example where a claim made on similar grounds (fear of rape due to gender) was rejected by the IRB *prior to the earthquake*, and then the decision was overturned by federal court Justice Yvon Pinard *following the earthquake*. The following analysis highlights the specifics of the *Dezameau* decision, and explains why this particular case is important in terms of modifying the legal jurisprudence.

### **The *Dezameau* Decision: An Important Case for Haitian Women**

Mitchell Goldberg, a lawyer specializing in refugee law indicated that the *Dezameau* decision<sup>29</sup> of the federal court is a decision that he personally, as well as other lawyers specializing in refugee law, have used in order to “[...] open the door wider for Haitian women who are claiming refugee status [...]” (Interview, April 5, 2011, Montreal). Elmancia *Dezameau* made a refugee claim based on the assertion that she and her daughters would be exposed to criminal violence and possible kidnapping and rape if returned to Haiti due to her political opinion, and their gender (Section 3). The IRB, which did not find enough evidence to support Ms. *Dezameau*'s claims of former political involvement while in Haiti, on July 10, 2009, rejected her claim as well as those of her dependent children (Sections 4-8). In addition, the IRB noted that the fact that Ms. *Dezameau* had never been a victim herself of gender-based violence played a role in the rejection of her claim (Section 9). The IRB maintained that the applicant's fear of kidnapping and rape was a result of “a general

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<sup>29</sup> *Dezameau v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 559

problem of criminality” in Haiti, and concluded that “[t]he jurisprudence has held that victims of generalized violence or potential victims of generalized violence such as the claimants are not afforded refugee protection” (qtd in Section 10).

The IRB’s decision was overturned by the Federal Court in May **2010** (in the months following the earthquake). In his decision, Justice Pinard noted the failure of the Board to evaluate the case within a “gender based analysis” (Section 18) and to “have considered the evidence with respect to her membership in a particular social group, namely women in Haiti or more specifically, Haitian women returning to Haiti from abroad” (Section 19). Justice Pinard made the following statement with respect to the decision made by the Immigration and Refugee Board:

[41] For all the above reasons, I find that the Board erred in law finding that a general risk of harm precluded the applicant’s claim of persecution. The Board further erred, in law and with respect to the facts, **in finding that rape is not a gender-related risk in Haiti or that rape is a general risk faced by all Haitians.** Finally, the Board did not consider the applicant’s **risk of rape due to her membership in the social group she alleged: women returning to Haiti from North America** (*emphasis added*, Section 41).

The fact that Justice Pinard overturned the ruling of the IRB in this case for the abovementioned reasons is important, as the case sets a precedent for Haitian women who fear rape as a result of their gender. Me Alain Vallières emphasized the importance of this development, noting that prior to the earthquake in Haiti, rape was never considered to be a valid reason for accepting the refugee claim of a Haitian woman (Interview, May 5, 2011, Montreal).<sup>30</sup>

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<sup>30</sup> The Dezameau decision made by the Federal Court could be viewed as a situation whereby the IRB *Guidelines on Women Refugee Claimants Fearing Gender Related Persecution* were properly applied;

Since Justice Pinard's ruling on the Dezameau decision in May 2010, this decision has been followed in two cases<sup>31</sup> (as of March 5, 2012). These two cases are *Josile v. Canada (Minister of Citizenship and Immigration)* and *Ocean v. Canada (Minister of Citizenship and Immigration)*. In the case of *Josile v. Canada*<sup>32</sup>, the applicant's IRB claim was rejected on May 25, 2010 (Section 38), but like the Dezameau decision, the Federal Court overturned the IRB decision on January 17, 2011, and allowed a judicial review. The Federal Court analysis of the Josile decision references specifically the details of the Dezameau decision (see Sections 18 - 24). In addition, the analysis refers specifically to the country conditions following the Haitian earthquake:

[...] It would appear that **since the earthquake, some 1.5 million persons have been displaced and are living in close proximity in camps or elsewhere in extreme conditions and without adequate protection**, as the case may be. Considering that fear of persecution is forward-looking, the Court expects that there will be a complete and objective evaluation of the most up-to-date documentation with respect to rape and sexual abuse committed against women and children in Haiti in light of the particular situation of the applicant and **increasingly worsening country conditions** (*emphasis added*, Section 38).

In the case of *Ocean v. Canada*<sup>33</sup>, the applicant's refugee claim was denied by the IRB on August 18, 2010 (Section 1). Although this case followed the reasoning articulated in both the Dezameau and Josile Federal Court decisions, the applicant's request for a judicial review was denied by the Federal Court on June 29, 2011 because it was determined that:

[...] the basis or the heart of the applicant's claim under section 96 was not her fear of persecution because she belongs to a particular social group, that of Haitian women returning to that country after a prolonged absence and fearing being raped because of their gender. The basis of her fear of return concerned a fear of a different nature.[...] (Section 18).

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however, the decision remains important in terms of setting a precedent as it relates specifically to Haitian women.

<sup>31</sup> According to LexisNexis Quicklaw, Summary of Judicial Considerations in all Canadian courts.

<sup>32</sup> *Josile v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 39 (QL)

<sup>33</sup> *Ocean v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 796 (QL)

The original IRB panel found that the applicant’s fear was “[...] based on crime, pure and simple” (qtd in Section 4) rather than based on a fear due to the applicant’s membership in a particular social group, and the Federal Court agreed with this ruling (Section 18, 20).

In summary, although the definition of a refugee is clearly defined and does not apply to situations of environmental displacement, the Haitian earthquake, as well as the subsequent increase in sexual violence against women in Haiti has led to the establishment of a new jurisprudence with respect to Haitian women who fear rape and sexual violence as a result of their gender. It is important to note however, that granting refugee status following the earthquake was not the primary means of responding to the displacement of Haitian nationals as the limits of the refugee definition made it so that it was unlikely to apply in many cases.

## **Part II: Complementary Protection in Canada – A Flawed Design**

In addition to the set of immigration measures discussed at length in Part I, other mechanisms that outline special categories of people who are deserving or in need of protection, also known as “complementary protection mechanisms” were used following the earthquake. These mechanisms are legislated under the Immigration and Refugee Protection Act (IRPA), and include Canada’s moratorium on removals, and permanent residence based on humanitarian and compassionate considerations. The following analysis explores these mechanisms in more detail and highlights the ways in which they were applied following the Haitian earthquake. Protected Person status is another complementary protection mechanism

available in Canada; however, this mechanism is unlikely to apply to Haitians in the post-earthquake context. This fact is briefly explored at the beginning of this Part. Finally, the analysis demonstrates that the complementary protection measures available in Canada (namely protected person status, moratorium on removals, and permanent residence based on humanitarian and compassionate considerations) could not be considered as part of the main thrust of the Canadian response following the earthquake, which reveals some important protection gaps for individuals displaced as a result of environmental factors.

### **Protected Person Status Unlikely to Apply to Haitians Following the Earthquake**

In Canada, under the Immigration and Refugee Protection Act (IRPA), refugee protection can be given to “convention refugees” as well as any “persons in need of protection” [IRPA, Part 2, 95-97]. A person in need of protection is defined by the Act as a person who is currently in Canada, and whose removal from Canada and return to their country of origin would expose them to “danger”, “a risk to their life”, or “a risk of cruel treatment” [for full definition see: IRPA, Part 2, 97]. “Convention refugees” and “persons in need of protection” who receive refugee protection are eligible to apply for permanent residency (IRPA, Part 1, 21(2)).

In the Canadian context, the “persons in need of protection” section of the IRPA (Section 97) is unlikely to apply in the case of displaced Haitians who are seeking protection in Canada following the earthquake. This is because the Act states that the person in need of protection must be exposed to risk in *any part* of their country of origin [Part 2, Section 97(1)(bii)]. Furthermore, risks faced by the *general population* are not admissible under this provision

[Part 2, Section 97(1)(bii)]. Given that the destruction caused by the earthquake in Haiti was concentrated in the capital city of Port-au-Prince, and that all residents of that city face the same risks as a result of this disaster, the “persons in need of protection” clause of the IRPA is unlikely to apply in this situation.

## **Moratorium - A Complementary Protection Mechanism**

Following the earthquake, Canada’s moratorium on removals mechanism was included as part of the federal measures adopted for Haiti. The analysis that follows demonstrates that even though this mechanism is designed to provide protection to individuals who may fall outside the scope of the Refugee Convention, moratorium has never been applied in situations of environmental displacement until now. Secondly, it is shown that although moratorium is supposed to be a temporary solution in many cases, typically this mechanism is used for long periods of time. Finally, the analysis questions the ultimate purpose of having a moratorium mechanism given that there are a number of opportunities for the beneficiaries of this status to transition to a more permanent status in Canada.

The possibility to designate a temporary stay of removal (TSR) or a “moratorium on removals” for foreign nationals is a complementary protection mechanism that exists in Canada (CCR, 2005, p.2). A moratorium can be issued for nationals from a country that is experiencing armed conflict, an environmental disaster that leads to “[...] a substantial temporary disruption of living conditions; or, [...]”, in “any situation that is temporary and generalized” (Immigration and Refugee Protection Regulations (IRPR), Part 13, Division 3, Section 230; see also CCR, 2005, p.2). Based on the definition of “complementary

protection” used in this thesis, a moratorium would also qualify as a complementary protection mechanism for the following reasons. To begin, a moratorium is based on an international protection obligation – that of non-refoulement for individuals who may face a threat to their lives upon return to their country of origin. Secondly, a moratorium is aimed at protecting individuals who have been denied refugee status but whose removal to their country of origin is deemed unsafe (CCR, 2005, p.2), and therefore represents the Canadian government’s formal recognition that protection is warranted in some cases falling outside the scope of the Refugee Convention.

Following the earthquake, Canada announced a temporary stay of removals (also known as moratorium on removals) for all Haitians facing removal as part of the federal measures adopted for Haiti (CIC, 2010, Jan. 16). However, it should be noted that this measure was not unique to the post-earthquake context, since Haitians have been protected under moratorium in Canada since May 2004 (CCR, 2005, p.2; CIC, 2010, Jan. 16). The difference between the moratorium prior to and following the earthquake is that certain Haitians were ineligible for moratorium protection based on inadmissibility grounds (i.e., “security”, “violating human or international rights”, “serious criminality”, “criminality”, and “organized criminality”) prior to January 12, 2010 [(IRPR), Part 13, Division 3, Section 3(a-d)]. However, following the earthquake, Citizenship and Immigration Canada announced that even Haitian nationals with criminal convictions facing deportation would be protected under the newest designation of a moratorium on removals (CIC, 2010, Jan. 16). Therefore, Canada has recognized the protection need for Haitians since 2004, and simply expanded the scope of its moratorium protection to include those who would be otherwise ineligible.

While some might argue that it is not in Canada's interests to continue to host individuals who have criminal records, I would argue that this is a constructive act on the part of the Canadian Government. Halting the removals of all Haitian nationals facing deportation, even those with criminal convictions represents an acknowledgement on the behalf of the Canadian government that the Haitian government is unable at this time to manage the return of these individuals. In addition, it could be argued that given the current instability in Haiti, resuming deportations of criminals to the country, although it may render Canada more "secure", will only serve to displace the security risk to Haiti, rendering the already unstable country more "insecure".<sup>34</sup> Finally, the decision by the Canadian Government to halt all deportations to Haiti also reinforces the fact that Canada has an obligation not to return individuals (regardless of their criminal history) to a situation where their lives may be endangered. To date, the Canadian government has not announced when deportations will resume for those individuals who were ineligible for a stay of removal prior to the earthquake.

It is important to note in this discussion that natural disasters have *never* brought about a moratorium on removals designation until the earthquake in Haiti, and even in this case, the moratorium designation was already in place. Even following the Asian Tsunami of 2004, Canada did not provide a moratorium to individuals from Tsunami affected countries.<sup>35</sup>

Unfortunately, information concerning the number of Haitian nationals currently protected

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<sup>34</sup> Audrey Macklin makes a similar argument in relation to the global fight against terrorism (see Macklin, 2001, p.398).

<sup>35</sup> For more information on Canada's response to the Asian Tsunami see CIC, 2005; also in Segerblom, 2007, p.671. Moratoria on removals were issued for nationals from Burundi, Liberia and Rwanda as a result of armed conflict and violence that existed in these countries at the time of designation (CBSA, 2009, Mar. 23). For Zimbabwe, and Haiti (in 2004) a moratorium was given due to the consequences of widespread political violence in the country (CCR, 2005, p.2, 5). Likewise, moratorium was provided to Liberia as a result of armed conflict and violence, and to Iraq at the beginning of the Iraq war in 2003 (CCR, 2005, p.2).

under a temporary stay of removals was blocked out of certain sections of my *Access to Information* request (CIC, ATIP Request, p.234), and I did not receive the data I requested from CBSA prior to submitting this thesis. However, one table that was not omitted from a draft background document in the *Access to Information* release package noted that there are an estimated 1,500 Haitian nationals in Canada protected under a TSR<sup>36</sup> (CIC, ATIP Request, p.772).

### **A Temporary Mechanism to Respond to Long-term Problems**

One of the primary shortcomings of moratorium in fulfilling its stated objectives is that this complementary protection mechanism is designed for use in situations where disruption in the host country is “temporary”; however, past practice indicates that moratorium has often remained in place for long periods of time.

To date, foreign nationals from eight countries have been given a moratorium on removals including Afghanistan, Burundi, the Democratic Republic of Congo, Haiti, Iraq, Liberia, Rwanda and Zimbabwe (Elgersma, 2008; CCR, n.d. b). In 2009, the moratorium on removals was lifted for Burundi, Liberia and Rwanda as the situations in these countries was deemed to have stabilized (CBSA, 2009, Mar. 23).<sup>37</sup> Individuals from Burundi and Rwanda were protected under a moratorium on removals since 1994, and Liberian nationals were protected since 2003 (CBSA, 2009, Mar. 23). The remaining five countries that are listed as

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<sup>36</sup> The document suggests that these 1,500 Haitian nationals are failed refugee claimants (CIC, ATIP Request, p.771).

<sup>37</sup> According to CIC documents, when the moratorium designations were lifted for Burundi, Liberia and Rwanda in 2009, there was also a recommendation that the designation for Haitian nationals be lifted (CIC, ATIP Request, p.774). However, the Minister of Public Safety did not to lift the designation for Haitian nationals, given that many of these individuals had not had enough time to become “well-established” in Canada (CIC, ATIP Request, p.774).

moratorium countries have held this status for a number of years: Afghanistan since 1994, the Democratic Republic of Congo since 1997, Zimbabwe since 2002, Iraq since 2003 and Haiti since 2004 (CIC, 2010, Mar. 31, Sec. 13). Given the large Haitian Diaspora in Canada as well as the devastation caused by the earthquake in Haiti, the Canadian government is unlikely to lift the moratorium for Haitian foreign nationals in Canada in the near future.

### **Possibilities for Moratorium Beneficiaries to Transition to a More Secure Status**

Given that individuals covered under a moratorium on removals have historically been provided protection for years rather than months, it is important to examine the possibilities in Canada for these individuals to adjust to a more permanent status.

Citizenship and Immigration Canada maintains that as of 2006, approximately 16,000 (or 90%) of individuals from Afghanistan, the Democratic Republic of Congo, Haiti, Iraq and Zimbabwe that were protected under moratorium have obtained permanent residence in Canada since the establishment of this designation (CIC, 2009c, par.8). Foreign nationals protected under moratorium can access permanent residency in Canada in one of three ways: 1) by applying for refugee status; 2) if the foreign national is married to, or enters in a common law relationship with a permanent resident; 3) via the humanitarian and compassionate consideration clause of the IRPA (see CIC, 2009c).

According to CIC, “since the implementation of the stays, refugee status has been granted to over 15,000 individuals from these countries<sup>38</sup>, resulting in an acceptance rate of almost 80%” (CIC, 2009c, par.5). Foreign nationals under moratorium also have had success obtaining permanent residency in Canada under the humanitarian and compassionate clause of the IRPA, and according to CIC, in 2005, 85% of TSR applicants under H&C were approved (CIC, 2009c, par.7).

As previously mentioned, asylum seekers are only eligible for protection under the Refugee Convention if they face **an individualized risk** to their safety based on very specific criteria. In discussion with Mitchell Goldberg, a lawyer specializing in Refugee Law, he noted that individuals that were once protected under a moratorium on removals, who have subsequently been granted refugee status are most likely individuals who were either residing in Canada illegally and had never before made a claim for refugee status, or are individuals who were in Canada at the time of the designation on a visitor’s visa (Interview, Mitchell Goldberg, April 5, 2011, Montreal). Thus, the individuals who were granted refugee status (who had once been afforded protection under moratorium) must have been able to argue that they faced an individualized risk to their life in their country of origin, *aside* from the generalized risk that they faced which enabled them to be protected under the moratorium status in the first place.

Given that most people under a moratorium designation do **eventually** obtain permanent residency in Canada through either refugee applications or H&C applications, what is the

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<sup>38</sup> “These countries” being Afghanistan, Democratic Republic of Congo, Haiti, Iraq and Zimbabwe – countries that were designated as moratorium countries at the time the report was written (see CIC, 2009c).

purpose of portraying this measure as a temporary solution to protracted situations? Better yet, what is the purpose of having this mechanism at all?

One possibility for avoiding the complicated process of transitioning from moratorium status to permanent status in Canada has already been recommended by the Auditor General of Canada, the Standing Committee on Citizenship and Immigration, and the Canadian Council for Refugees (CCR) – the reinstatement of a mechanism similar to the Deferred Removal Orders Class (DROC) that was implemented in Canada in 1994 (Office of the Auditor General, 1997; House of Commons Canada, 2007, p.20; CCR, 2005, p.13). The DROC was designed to provide access to permanent residency for certain foreign nationals who were not eligible for refugee status, but could not be deported by the Canadian government for a number of reasons, including instability in their home country (Office of the Auditor General, 1997, sec. 25.137). These individuals had to have resided in Canada for a minimum of three years (Perryman, 2009, p.37). This particular initiative was terminated in 1997 (Office of the Auditor General, 1997, sec. 25.137).

Although a class similar to the DROC has been recommended on several occasions, the Government of Canada is resistant to creating any such class that would simplify the adjustment of status for individuals protected under moratorium. In response to the Report of the Standing Committee on Citizenship and Immigration, the Parliament of Canada noted that a “regulatory class” similar to the DROC would be disadvantageous to the Canadian immigration system as it would propel incidence of irregular migration in order to obtain permanent residency through this mechanism (Parliament of Canada, 2007, Section D, par. 7; CIC, 2009c, par. 12). Furthermore, the Parliament of Canada noted that “the creation of a

regulatory class for these individuals would be providing a unique benefit to some out-of-status foreign nationals, while requiring others to apply through regular immigration channels” (Parliament of Canada, 2007, Section D, par. 7; CIC, 2009c, par. 12). However, it could be argued that the Canadian Government has already identified the “out-of-status foreign nationals” (who would be eligible for permanent residence under a mechanism such as the DROC) as individuals with a particular protection need by affording them a moratorium on removals. Therefore, the argument made by the Parliament of Canada against a regulatory class is contradictory to the very basis of the moratorium mechanism, which is designed to benefit some “out-of-status foreign nationals” over others due to exceptional circumstances.

Following the Haitian earthquake, there were requests on the federal government to consider regularizing the status or granting permanent residency to Haitians protected under the moratorium designation (CIC, ATIP Request, p.298), as well as other Haitian nationals who were in Canada at the time of the earthquake, but did not have permanent residence (CIC, ATIP Request, p.771). CIC documents estimate that nearly 15,100 Haitians are in Canada but do not have permanent residence (Ibid). These include 8,000 Refugee Claimants, **1,500 Haitians protected under TSR**, 500 Students, 100 Temporary Foreign Workers, and 5,000 Visitors (CIC, ATIP Request, p.772).<sup>39</sup> A draft CIC document (see Appendix M) outlined some of the possibilities for regularizing the status of Haitian nationals in Canada, including those under moratorium (or TSR). These possibilities included using the humanitarian and compassionate mechanism (H&C), and developing “specific guidelines” for Haitian H&C

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<sup>39</sup> The draft CIC document does not provide the exact date of these statistics (see Appendix M). However, the document was drafted following the earthquake, thus one could infer that these statistics were the most current statistics that were available after January 12, 2010.

applicants (CIC, ATIP Request, p.772); or, the creation of a public policy for Haitians which would serve to “facilitate permanent residence for a group of individuals with similar circumstances who do not comply with the criteria of one of the existing immigration classes” (CIC, ATIP Request, p.773). However, for both of these possibilities, the document pointed to the risk of “legal challenges” as well as “pressure” to offer equivalent opportunities to other groups of TSR nationals (CIC, ATIP Request, p.772-3). In other words, although the federal government considered regularizing the status of certain nationals under moratorium, the risks associated with this type of action, and the fear of being called to regularize the status of other moratorium beneficiaries seem to have outweighed the potential benefits of regularizing the status of TSR nationals. Given that the situation in Haiti will take many years to improve, the federal government should revisit the idea of regularizing the status of Haitian nationals currently in Canada without permanent residency in order to come up with a permanent solution to a problem that is anticipated to last for the long-term.

### **Humanitarian and Compassionate Grounds: An Inefficient Mechanism to Respond to Human Displacement Following Natural Disasters**

A background document produced by CIC on January 20, 2010 noted that special measures were not “necessary” in the context of the Canadian response to natural disasters due to the existence of other legislated mechanisms, including Humanitarian and Compassionate considerations (CIC, 2010, Jan. 20 – Overview of Special Measures Taken in Natural Disasters, see Appendix O). Humanitarian and Compassionate (H&C) considerations is defined by the IRPA in the following way:

The Minister must, on request of *a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act*, and may, on request of a foreign national outside Canada,<sup>40</sup> *examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations* of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interest of a child directly affected (*emphasis added*, IRPA Part 1, Section 25(1)).

Thus, H & C is another complementary protection mechanism that exists in Canada, whereby individuals who may fall outside the scope of the refugee convention, or may be inadmissible under existing Canadian immigration legislation are able to apply for permanent residency.<sup>41</sup> Based on CIC's background document, it is clear that H&C is considered to be among Canada's primary response mechanisms that can be used following a natural disaster. Consequently, it is important to examine whether or not H&C has been used following the Haitian earthquake as a means of responding to displaced Haitians, and to evaluate the effectiveness of this measure as a way of responding to displacement caused by natural disasters.

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<sup>40</sup> There are a few cases where applications for permanent residency can be made on humanitarian and compassionate grounds from abroad. These include for example "a) excluded family members (R. 117(9)(d)), b) children who are found through DNA not to be the biological children, and c) other de facto family members" (CCR, 2006, par.2).

<sup>41</sup> Jane McAdam, a scholar that specializes in the study of complementary protection, maintains that certain humanitarian and compassionate mechanisms that exist do not necessarily constitute "complementary protection" as they are not founded on a state's legal "international protection obligation" (see McAdam, 2005, p.1). However, in the case of the H&C clause of the Immigration and Refugee Protection Act (IRPA), the argument could be made that this mechanism is based on Canada's non-refoulement obligations. For example, the H&C provision takes into special consideration the effects that deportation may have on the dependent children of the applicant. Part 1, Section 25(1) of the IRPA notes that the Minister will render H&C determinations "[...] taking into account the best interests of a child directly affected [...]". Therefore, it could be argued that this mechanism is also based on Canada's international obligations under the Convention on the Rights of the Child (see Convention on the Rights of the Child, Part 1, Article 3 and Article 9).

## **Hardships Associated with the Haitian Earthquake Included in H&C Eligibility Criteria**

In order to be eligible for H&C consideration, the applicant must be able to demonstrate “unusual, undeserved or disproportionate hardship” that would enable them to be exempt from other criteria under the IRPA (CIC, 2011, Apr.1, p.12). According to a document produced by CIC outlining the guidelines for H&C applications, the hardship component is often determined along the following lines: will the applicant experience “hardship” if he or she had to return to their country of origin in order to apply for permanent residency in Canada from overseas? (CIC, 2011, Apr.1, p.12). This is an important distinction, as the H&C clause of the IRPA is sometimes interpreted as a way of helping applicants who are in dire humanitarian situations. Me Alain Vallières explained this misinterpretation, noting the following:

Parce que le titre, le nom de la procédure trompe beaucoup les gens [...] c’est un processus pour *considération humanitaire* - la plupart des gens disent *motif humanitaire*. Donc ils y voient un dossier d’immigration dans lequel vous demandez au Canada de vous garder parce que vous faites pitié. C’est pas ça, c’est un dossier d’immigration que vous demandez au ministre d’étudier au Canada parce que vous ne pouvez pas déposer votre demande dans votre pays d’origine pour des considérations humanitaires (Interview, Me Alain Vallières, May 5, 2011, Montreal).

In other words, the Minister of Citizenship and Immigration Canada is asked that an application for permanent residency be reviewed in Canada (or in a few select cases outside of Canada) because the application cannot be submitted in the country of origin for humanitarian and compassionate considerations. It is important to make this distinction, as the mechanism is not necessarily designed to respond to humanitarian crises, but rather is used in exceptional circumstances whereby individuals are not eligible for permanent

residency in Canada, but their applications are examined in light of potential humanitarian and compassionate considerations if they were to be returned to their country of origin.

There are a number of factors that individuals can use to prove unusual or undeserved hardship when applying for permanent residency on H&C grounds. For example, some of these include: “establishment in Canada”, “health considerations”, “consequence of the separation of relatives”, “ties to Canada”, “the best interests of any children affected by their application” (CIC, 2011, Apr.1, p.13).<sup>42</sup> Citizenship and Immigration Canada noted in an Operational Bulletin following the earthquake that “hardships” as a result of the earthquake would be included in the factors that could be cited in H&C applications, but emphasized that merely being a Haitian citizen was not sufficient (CIC, 2010, June 29). The inclusion of earthquake-related hardships in the criteria for H&C applications is significant as it demonstrates the Canadian Government’s recognition that the devastation caused by this natural disaster should be considered when assessing Haitian H&C claims. Although earthquake-related hardships were to be considered in H&C cases, it is important to examine how widely H&C was used following the earthquake. According to a CIC document only 87 Haitian nationals had pending H&C applications prior to the earthquake, and these cases were expedited following the earthquake (CIC, ATIP Request, p.772). The following section demonstrates that although federal documents consistently point to H&C as a viable option for Haitian nationals, the same documents also indicate a reticence to placing too much public emphasis on this measure. In addition, it is shown that while a number of Haitians made permanent residency applications based on humanitarian and compassionate

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<sup>42</sup> For a more detailed list of factors, please see (CIC, 2011, Apr.1, p.13).

considerations following the earthquake, the number of Haitians whose applications have been approved, or who have been granted permanent resident visas is minimal.

### **Use of the H&C Mechanism Following the Earthquake**

As a result of Quebec's decision to implement a special humanitarian sponsorship program whereby certain members of one's extended family could be sponsored (this will be discussed at length in Part III), the federal government was under a certain amount of pressure to offer an equivalent mechanism nationally so that Haitian Canadians in provinces other than Quebec could sponsor their extended family members that were not eligible under the family class (CIC, ATIP Request, p.140, 137, 318, 331, 392). Despite this pressure, CIC documents consistently pointed to the availability of H&C to respond to this gap between the federal measures and Quebec's provincial measures (CIC, ATIP Request, p. 50, 358, 382). For example, one CIC document noted: "For those outside of Quebec, communications may point to the availability of H&C. However, clear emphasis should be placed on [the] use of H&C for exceptional cases" (CIC, ATIP Request, p.50). Although H&C appears in CIC documents to be the federal government's "go-to" measure, other CIC documents indicated a wariness of putting too much emphasis on H&C due to "operational implications" (CIC, ATIP Request, p.141). For example, one document noted: "A decision is required on the level of profile that CIC should give to H&C in its communications messaging, given the potential operational implications, both in Canada and overseas" (CIC, ATIP Request, p.141).

From her experience working with Haitians through the pro-bono legal clinic offered at the Maison d’Haiti following the earthquake, Me Isabelle Dongier noted that a number of Haitians were preparing H&C claims. Dongier articulated that claims were being prepared either by failed refugee claimants; individuals who were not eligible for family sponsorship, or whose sponsorship applications had been refused (Interview, Me Isabelle Dongier, April 5, 2011, Montreal). According to CIC data, from January 2010 to March 2011, **1,156 Haitians** submitted permanent residence applications in Canada under humanitarian and compassionate considerations (this figure includes both HC1<sup>43</sup> and HC2 Applications). However, as of March 2011, only **206** HC1 and HC2 applications made by Haitians had been approved in Canada, and only **7** Haitian applicants under the HC1 stream had received permanent resident visas (CIC, 2011, Data Table: Permanent Residence Applications Authorization to Haitian Citizens – In persons; Data Table: Permanent Residence Visas to Haitian Citizens - In Persons, See Appendix K). These statistics demonstrate that although a number of Haitians made permanent residence applications based on humanitarian and compassionate grounds following the earthquake, very few of these applications were approved.

From his experience, Mitchell Goldberg has noticed a shift in the results he has received for clients making an H&C application since the earthquake. He articulated that prior to the earthquake, he experienced a 100% success rate in his Haitian clients’ H&C applications, if his clients were employed, paying taxes and not receiving social assistance (Interview, April 5, 2011, Montreal). However, he noted that since the earthquake some (but not all) H&C

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<sup>43</sup> HC1 applications are those that have been processed within Canada, whereas HC2 applications are those where the “H&C applicants are not members of the family class”, but the applicants are sponsored by a family member (for more details see: CIC, 2011, p.65).

applications made by his Haitian clients have been rejected (Interview, April 5, 2011, Montreal). He suggested that this was perhaps a result of the “enforcement mentality” of the current government, and that it has been more difficult not only for Haitians, but for all H&C applicants to have their applications accepted.

### **Typically Low Success Rate for H&C Applications**

The fact that H&C is used to respond following natural disasters is interesting given the typically low success rate of H&C applications, as well as the long processing delays associated with these applications. Alain Vallières, a lawyer specializing in immigration and refugee law, noted that less than 5% of applications made on H&C grounds are accepted.<sup>44</sup> Due to the low success rate associated with these applications, Vallières explained the importance of taking the time to prepare the application (a process that could take months), and that his first H&C cases (post-earthquake) were only submitted 3-4 months after the earthquake. In addition, Vallières pointed to the fact that the H&C application process was quite lengthy, and that the application is usually processed within 10 months to 1 year. Other sources also note that the H&C application process can often take a number of years to complete (Bradley, 2010, p.394; Goldring, Berinstein and Bernhard, 2009, p.252; CCR, 2006). Even within their own documents, CIC pointed to the fact that the processing of H&C applications is lengthy. For example a document stated the following: “It should be noted that there is a substantial backlog of in-Canada H&C applications, which typically take XX months to process. Processing of new H&C applications would not be expected for some time (OMC to confirm)” (CIC, ATIP Request, p.234).

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<sup>44</sup> An acceptance rate of 2.5 – 5% for humanitarian and compassionate claims is also mentioned in (Goldring, Berinstein and Bernhard, 2009, p.252).

The lengthy processing times, as well as the low probability of success in H&C cases are problematic given that this mechanism is considered to be one of Canada's response mechanisms in "exceptional circumstances", and H&C was consistently cited as a plausible option for Haitian nationals. The abovementioned statistics from January 2010 to March 2011 regarding Haitian H&C applications are also evidence of the low success rate associated with this mechanism. The minimal numbers of Haitian H&C applicants granted authorization and permanent resident visas following the earthquake point to the weakness of this mechanism as a way to respond to human displacement following a natural disaster. Furthermore, the H&C process may not be the best mechanism to use in response to natural disasters as it has been criticized for the large amount of discretion that it gives to Immigration Officers rendering the decisions, as well as for the vague terms used to outline this unique category (Bossin, 1999, p. 108, 119; Sossin, 2005, p.434). Even CIC points to some of the problems associated with using the H&C mechanism:

[...] due to the *discretionary* nature of H&C, *decision making is complicated and time-consuming*. As H&C officers follow guidelines rather than strict criteria, *there is a greater risk of inconsistent decision making*. Also, given that many Haitians have not been in Canada for a significant period of time, *acceptance rates may be low* (CIC, ATIP Request, p.773; *emphasis added*).

To conclude, although the H&C mechanism is listed in CIC background documents as one of the mechanisms already available in Canada to respond following a natural disaster, it is clear that this mechanism has many flaws that render it an inefficient and ineffective mechanism to respond to sudden human displacement. These flaws include the discretionary nature of the measure, the lengthy processing times associated with H&C applications, and the low success rate of these applications. The Haitian case is also evidence of the inefficient nature of this mechanism, as very few of the H&C applications submitted by Haitians

following the earthquake were approved in that same year. Due to the lengthy processing times associated with H&C applications, it is possible that many of the Haitian applications submitted in 2010 are still under consideration, and therefore the statistics made available by CIC may not adequately reflect the effect of this measure. Nevertheless, the January 2010 – March 2011 statistics still demonstrate very few H&C applications have been approved for Haitians following the earthquake, and point to the fact that the H&C mechanism is not an appropriate measure to respond in a crisis situation.

What is interesting about the Canadian measures adopted as a whole is that the “complementary” protection mechanisms available in Canada were not used as the primary response mechanisms to this crisis. In fact, most of the measures used at the federal level were traditional immigration measures rather than complementary protection measures. Three of Canada’s mechanisms that could be considered “complementary protection mechanisms” – the moratorium on removals mechanism, protected person status and humanitarian and compassionate considerations – although used following the earthquake, could not be considered to be part of the main thrust of the Canadian response.

In the case of protected person status, this status was unlikely to apply in many Haitian cases following the earthquake as the applicant would need to demonstrate that they faced an individualized risk if they were returned to Haiti, not just the same generalized risks that are faced by all Haitians as a result of the earthquake (see IRPA, Section 97). As for the moratorium on removals, this protection mechanism had already been in place since 2004 for Haitians (CCR, 2005, p.2; CIC, 2010, Jan. 16); therefore this measure could not be considered unique to the post-earthquake context. Finally, the humanitarian and

compassionate mechanism, which was listed as one of the mechanisms available for the Canadian government to respond in the wake of natural disasters (CIC, 2010, Jan. 20 – Overview of Special Measures Taken in Natural Disasters), was used following the earthquake, but benefitted only a limited number of Haitians. The Haitian beneficiaries of all of the complementary protection mechanisms available in Canada were by no means comparable to the numbers of Haitians who benefitted (or will benefit) from the other immigration measures put in place federally.

The fact that Canada's complementary protection mechanisms did not make up the main thrust of the federal immigration response demonstrates that although these mechanisms exist to provide protection to individuals who may not be eligible for convention refugee status but are still in need of protection, they are not designed in such a way to be effectively applied in a crisis situation following a natural disaster. This fact is significant, as it reveals an important protection gap for individuals who have been affected by natural disasters. Although natural disasters are accounted for in Canadian legislation, and specifically articulated in the legislation pertaining to protected person status and moratorium on removals, these mechanisms were not the main initiatives used to respond following the Haitian earthquake. The fact that immigration mechanisms were used in addition to Canada's complementary protection measures indicates that these measures were not sufficient in responding within the context of this natural disaster.

In addition to the federal government's measures, the provincial government of Quebec also introduced its own set of measures to help facilitate the reunification of family members. The following section will examine in detail the Quebec Special Measures.

## **Part III: Quebec Special Measures**

Immigration Quebec put in place its own special immigration measures that were groundbreaking, and were more generous than what the federal government put in place following the Haitian earthquake. The section that follows highlights the specific immigration measures adopted by Quebec in response to the displacement caused by the earthquake, and demonstrates that while the Quebec special measures were exceptional and very generous, they have lived up to some, but not all of their stated objectives.

### **A Creative Opposition to the Federal Stance: Quebec's Humanitarian Sponsorship Program**

Quebec responded to the displacement caused by the Haitian earthquake by introducing a special humanitarian sponsorship program (“programme spécial de parrainage humanitaire”) which targeted members of the extended family that are usually not eligible for sponsorship under the Canadian family class (Interview, Chantal Drolet, June 10, 2011, Montreal). Quebec's humanitarian sponsorship program enabled individuals in Quebec to sponsor their *adult brothers, sisters, step-brothers and sisters, children over 21 years of age* as well as the family members of their adult siblings and adult children from Haiti (Radio Canada, 2010, July 12; MICC, 2010, Dec. 23, Questions et Réponses; Interview, Chantal Drolet, June 10, 2011, Montreal).<sup>45</sup> In addition, in order to assist the sponsors in Quebec who might not have

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<sup>45</sup> It is important to note that individuals applying for sponsorship through Quebec's humanitarian sponsorship program needed to demonstrate that they were significantly and personally affected by the earthquake (“gravement et personnellement affectés par le séisme” (see Portail Quebec, 2010; MICC, 2010, Dec. 23, Questions et Réponses)).

had the required financial capacity to sponsor a family member under the humanitarian sponsorship program, the Quebec government introduced a measure that enabled a co-sponsor on the application who did not necessarily have to be related to the sponsor or the family member to be sponsored (Portail Quebec, 2010; Interview, Chantal Drolet, June 10, 2011, Montreal). The possibility of having a co-sponsor was also applied to family class sponsorship applications (for parents, grandparents and minor orphaned children)<sup>46</sup> until December 31<sup>st</sup>, 2010 for sponsors living in Quebec (Portail Quebec, 2010; Interview, Chantal Drolet, June 10, 2011, Montreal).

Quebec was able to introduce a humanitarian sponsorship program due to its special authority over immigration in the province. Immigration to Quebec is governed by the Canada-Quebec Accord, which affords the province the authority to select which individuals will be accepted to immigrate to Quebec, while the federal government maintains authority over the admission of immigrants to the country (Gouvernement du Quebec, 2000, p.3, 6 - Section 2, 12(a)). However, the province does not have the ability to select individuals under the family class (Interview, Chantal Drolet, June 10, 2011, Montreal). This category is the domain of the federal government, while the province of Quebec does have some involvement when it comes to the “undertaking” agreement (agreement to support the family member) of the sponsor (Interview, Chantal Drolet, June 10, 2011, Montreal).

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<sup>46</sup> The co-sponsor possibility for family class applications applied only to those family sponsorship applications submitted for parents, grandparents and minor orphaned children, because in these cases it is necessary for the sponsor to demonstrate that they meet the financial requirements for sponsorship. Therefore, enabling a co-sponsor on these applications would make it easier to meet the financial requirements (Clarified by Chantal Drolet in a follow-up email, March 8, 2012).

To adopt the special humanitarian sponsorship program, Quebec used its discretionary power in order to select Haitian immigrants in distress. This power is outlined under Sections 27 and 18(c) of the *Regulation respecting the selection of foreign nationals* [c. I-0.2, r. 4], which states that the Minister can issue a selection certificate to individuals who are considered to be in “particularly distressful situations” (sec. 27(1)). Section 18(c) outlines that a person in a situation of distress whose “[...] physical, mental or moral well-being and that of his family legally in Quebec would be seriously affected if he could not remain in or come to Quebec” should be given humanitarian consideration.

This point is important because at first glance, the humanitarian sponsorship program could be misinterpreted as an expansion of the federal family class sponsorship criteria. However, this is not the case, as the humanitarian sponsorship program adopted by the province of Quebec is independent of the regular family class sponsorship stream.<sup>47</sup> Chantal Drolet specified the following with respect to the humanitarian sponsorship program: “Le programme spécial **ce n’est pas un programme d’allègement du programme fédéral**. C’est un programme qui s’ajoute. Et c’est un programme qui n’est pas structuré de la même façon que le regroupement familial [...]” (Interview, Chantal Drolet, June 10, 2011, Montreal).

Given this distinction, it is important to highlight some of the differences between the application process for family reunification under the family class and the humanitarian sponsorship program adopted in Quebec. To begin, under the family class, a sponsor living in Quebec must first submit an application to sponsor a family member to the federal

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<sup>47</sup> The details of this special program are outlined in Division IX – *Victims of the Earthquake in Haiti*, Sections 69-72 of the *Regulation Respecting the Selection of Foreign Nationals* [Quebec, R.S.Q., c. 1-0.2, s. 3.3].

government (MICC, 2010, fév., p.1). If the federal government accepts the application, the sponsor then submits an “undertaking application” (known as a “demande d’engagement”) to the Quebec government (MICC, 2010, fév., p.1). The purpose of this undertaking application is to determine the financial capabilities of the sponsor and to create a type of “contract” whereby the sponsor agrees to support the family member for a set length of time (MICC, 2011, 6 juin). At the same time, the individual being sponsored must submit an application for a CSQ (Certificat de sélection Québec) (MICC, 2010, fév., p.15). If the undertaking application is accepted, then a CSQ is issued for the individual being sponsored (MICC, 2010, fév., p.13). The onus is then on the sponsored applicant to submit an application for permanent residency at the federal level (MICC, 2010, fév., p.6). Sponsors under the family class are responsible to support their family members for a minimum of 3 years for children 16 years of age or older, and a minimum of 10 years for children under 16 years old (MICC, 2010, fév., p.6). The sponsor must support parents and grandparents for 10 years (MICC, 2010, fév., p.6).

There is one less step under the humanitarian sponsorship program than under the family class sponsorship process, as the sponsor does not have to submit an application to the federal government first (the first step under the family class) (Interview, Chantal Drolet, June 10, 2011, Montreal). In addition, the length of the “undertaking” on the part of the sponsor is set for a period of 5 years under the humanitarian sponsorship program (Interview, Chantal Drolet, June 10, 2011, Montreal ; Portail Quebec, 2010).

## **Special Nature of the Humanitarian Sponsorship Program**

The establishment of a humanitarian sponsorship program in Quebec was special for several reasons.

*To begin*, the sponsorship criteria under the humanitarian program were exceptional, as *adult* brothers, sisters, step brothers and sisters and *adult* children cannot be sponsored under the federal family class. The only family members that can be sponsored in Canada under the family class are immediate family members (for example parents, spouses, common-law/conjugal partners and children under 18 years of age) as well as selected members of the extended family (including grandparents and orphaned relatives under 18 years of age) (see CIC, 2010, June 3).

*Secondly*, the sponsorship criteria under the humanitarian program were unique as they allowed sponsors to include a “co-sponsor” on the application package in order for them to meet the financial requirements. This is rare, as these co-sponsors did not have to be the spouse or common-law partner of the Canadian sponsor (which is necessary under federal family sponsorship rules) (CIC, 2010, May 25, par. 12). For example, co-sponsors could be friends, neighbors or even employers – which is not typically allowed under normal family sponsorship processes (Interview, Mitchell Goldberg, April 5, 2011, Montreal; Interview, Me Isabelle Dongier, April 5, 2011, Montreal). According to Chantal Drolet of the MICC, the goal of the non-family co-sponsor possibility was to allow Quebec residents who were not members of the Haitian community to participate in the sponsorship program and to be able to help out in some way, and to show their solidarity with the Haitian community in Quebec.

Drolet also mentioned that even though this was the goal of the co-sponsor measure, there were not very many individuals outside of the community that spontaneously offered to be co-sponsors on applications. The measures implemented by the province of Quebec were also unique because the possibility of including a co-sponsor on a sponsorship application was applied to sponsors applying under the federal family class. This was not possible for applications under the family class prior to the Haitian earthquake, and was only possible up until December 31, 2011 (MICC, 2010, Dec. 23, Séisme en Haïti). The research participant, Chantal Drolet noted that before the Quebec special measures were established, it was not entirely clear whether or not it was within Quebec's jurisdiction to enable sponsors residing in Quebec to add a non-family co-sponsor to their application to sponsor a Haitian under family class reunification. However, she noted that following discussions with the federal government, it was acknowledged that the province of Quebec *could* enable a co-sponsor on family class applications (Interview, Chantal Drolet, June 10, 2011, Montreal). Me Isabelle Dongier noted the following regarding allowing non-family co-sponsors to participate in family sponsorship: “[...] ça, c’est vraiment une mesure très spéciale qui n’existe pas ailleurs en matière de parrainage, dans le parrainage habituel, et c’est vraiment quelque chose de très particulier à Haïti, enfin au programme spécial pour l’Haïti” (Interview, April 5, 2011, Montreal).

**Thirdly**, this was the first time that the province of Quebec used its discretionary authority to introduce a program that targeted a *large group of people in a particular situation* (Interview, Chantal Drolet, June 10, 2011, Montreal). Drolet noted that in the past (for example following the 2004 Asian Tsunami), the federal government adopted public policies in order to introduce some special measures to respond following a natural disaster. According to

Drolet, when public policies are adopted federally, the province of Quebec will often try to offer something equivalent within the province. However, in this case Quebec took the initiative in introducing its own special humanitarian sponsorship program because the federal government did not introduce a special program for Haitians (Interview, Chantal Drolet, June 10, 2011, Montreal). The province of Quebec has in the past adopted a special program for Haitians residing in the province. However, this program was designed to regularize the status of those Haitians residing in Canada illegally or were in Canada on a temporary status (Interview, Chantal Drolet, June 10, 2011, Montreal; Interview, Marjorie Villefranche, May 5, 2011, Montreal; Miller, 1984, p.53). Under this 1981 regularization program, an estimated 4000 Haitians who were residing in Quebec in an irregular status were granted permanent residency (McDonald, n.d. p.67).

*Fourthly*, although there were calls upon the federal government to expand sponsorship criteria for Haitians at the national level (these requests are described in more detail on page 109), calls to do so were ignored (TCRI, 2010, Jan. 19; CBC News, 2010a; Elliott, 2010, Feb. 2; Whittington, 2010, Jan. 17; CIC, ATIP Request, p.318, 331). Therefore, the possibility of sponsoring certain members of one's extended family was a measure unique to Quebec, and consequently only individuals residing in the province could take advantage of these measures.

*Finally*, the humanitarian sponsorship program was unique as it was originally supposed to target a maximum of **3,000 people** for immigration to the province; however, in reality, the program received applications well above its initial target (Portail Quebec, 2010). According to Chantal Drolet, the MICC received 4,384 applications under the special humanitarian

sponsorship program (Interview, Chantal Drolet, June 10, 2011, Montreal). This is discussed in more detail in the section entitled *Stated Objectives Fulfilled?*

In summary, the Quebec Special Measures were unique for the following reasons: 1) a special humanitarian sponsorship category was created whereby certain extended family members could be sponsored; 2) non-family co-signors could be included on humanitarian sponsorship and family class sponsorship applications alike; 3) the special program was more robust than the Canadian federal response; 4) the humanitarian sponsorship program received applications from well over its initial target of 3,000 people.

### **Stated Objectives Fulfilled?**

While the Quebec Special Measures represented a unique and creative response to the massive displacement caused by the Haitian earthquake, a critical evaluation of the measures reveals that in some ways these measures *did not live up to* their stated objectives, and in other ways the measures *exceeded* their stated objectives.

### **Short-lived Window of Opportunity Under the Humanitarian Sponsorship Program**

To begin, under the humanitarian sponsorship program, Quebec stated that it would accept a maximum of 3,000 people from Haiti (CIC, 2010, May 25, par.12), and initially stated that these measures would remain in effect from February 17 until December 31, 2010 (Portail Quebec, 2010). However, the Quebec special measures program was terminated suddenly, six months prior to its December 31 end date, with little warning from the Quebec

Government. On July 12, 2010, Quebec's Immigration Minister Yolande James announced that Quebec would be ending the special sponsorship measures on July 20, 2010 (just two weeks later) because the province estimated that it would meet its 3,000-applicant quota (Radio Canada, 2010, July 12; MICC, 2010, Dec. 23, Questions et Réponses). Any further applications for sponsorship would have had to be made before that date.

Mme Chantal Drolet explained the termination of the program further, noting that when the announcement was made, the MICC had already received applications for well over the 3,000 person quota that they had initially made. However, because the special program was to be in effect until December 31<sup>st</sup> 2010, according to the regulations, the only way to end the program earlier was to issue a notice that the processing of applications under this program would be halted as of July 21 until December 31<sup>st</sup>, 2010 (Interview, Chantal Drolet, June 10, 2011, Montreal). By suspending the processing of applications during this time period, the Quebec government was in effect ending the program (Interview, Chantal Drolet, June 10, 2011, Montreal).<sup>48</sup>

Marjorie Villefranche noted that the Haitian community was not pleased that the measures were terminated suddenly. Furthermore, she added that the sudden termination contradicted

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<sup>48</sup> The province was able to end the program early according to Section 3.5 of the *Loi sur l'Immigration au Québec*, which stipulates that Quebec's Immigration Minister can suspend the receipt of applications for CSQs if the number of applications from a particular region or category is expected to be significantly higher than what was originally intended (Interview, Chantal Drolet, June 10, 2011, Montreal; see also, *Loi sur l'Immigration au Québec – L.R.Q.*, Sec. 3.5). Section 3.5 also stipulates that when a suspension is invoked by the Minister, it can be applied (if indicated) to CSQ applications that were received 3 months prior to the suspension that have not yet been processed. However, in the case of the humanitarian sponsorship program, this was not the case, as the applications received following the Minister's announcement (on July 12, 2010) and up until July 21, 2010 were processed (Interview, Chantal Drolet, June 10, 2011, Montreal). According to Chantal Drolet, within that two-week period, the MICC received over 1,700 applications under the special program (Interview, Chantal Drolet, June 10, 2011, Montreal).

the MICC's assurances – namely that the measures would remain in effect until December 2010, and that applications would not be treated on a first come first serve basis. Consequently, the sudden termination was problematic, as it did not correspond with what the Maison d'Haiti had communicated to members of the Haitian community - that there was no rush to complete the applications (Interview, Marjorie Villefranche, May 5, 2011, Montreal). Villefranche also articulated the following with respect to the termination of the measures: “moi je pourrais dire qu'on a été victime de notre bon travail”, in that the applications that were prepared and submitted were well done, and therefore the MICC received over 3,000 applications that could not be refused (Interview, Marjorie Villefranche, May 5, 2011, Montreal).

Me Isabelle Dongier suggested that a lack of communication was to blame for the negative reaction to the sudden termination of the measures. She noted that people were surprised by the sudden termination of the measures because there had been little discussion about the 3,000-person quota since the measures had been put in place (Interview, April 5, 2011, Montreal). Me Dongier suggested that the shock of the sudden termination of the measures could have been avoided had Immigration Quebec provided monthly or bi-monthly updates of the numbers of applications received up until that point (Interview, April 5, 2011, Montreal). Although Quebec formally ended its special immigration measures on the 20<sup>th</sup> of July, it did continue one significant aspect of the special sponsorship measures until December 31<sup>st</sup>, 2010 – the ability of sponsors under the family class sponsorship categories to include a third person on their applications in order to meet the financial requirements (MICC, 2010, Dec. 23, Séisme en Haïti). After the 31<sup>st</sup> of December, all of the regular

stipulations for family sponsorship in Quebec were reinstated (MICC, 2010, Dec. 23, Séisme en Haïti).

### **Initial Quota Surpassed**

Under Quebec's humanitarian sponsorship program, **4,384 applications** were submitted up until the program was terminated in July, 2010 (Interview, Chantal Drolet, June 10, 2011, Montreal). These applications represented approximately **8,991 people** applying to immigrate to Quebec (as each of the applications submitted was for approximately 2 people) (Interview, Chantal Drolet, June 10, 2011, Montreal). As of May 31, 2011, **4,229 CSQs** had been issued to Haitians applying under the program, and 1,230 Haitians had been admitted to Canada (Interview, Chantal Drolet, June 10, 2011, Montreal). According to Chantal Drolet of the MICC, approximately **6,640 CSQs** will be issued to Haitians as a result of this special program once the processing of the applications is complete. In this sense, the province of Quebec clearly exceeded its initial objective of accepting a maximum of 3,000 people under this program as it accepted applications for 3 times the number of people (8,991), and the MICC estimates that roughly two times the number of people (6,640) will be issued a CSQ.

### **Humanitarian Sponsorship Program Not Designed for Rapid Family Reunification**

One objective that was not achieved immediately by this program was the goal of reuniting families (see announcement by Yolande James: Portail Quebec, 2010). Despite the fact that a large number of applications were received within a 6-month period, and the fact that over 4,000 CSQs have already been emitted under this program, as of May 31, 2011 only 1,230

Haitians had been admitted to Canada. This represents only 29% of the individuals who were issued CSQs as of May 31, 2011. Even two years after the earthquake, not all of the Haitians approved through the humanitarian sponsorship program had been admitted to Canada. According to a *Ministère de l'Immigration et Communautés culturelles Québec* (MICC) press release, as of January 11, 2012 over 2,600 Haitians had arrived in Quebec as a result of the province's humanitarian sponsorship program (MICC, 2012). However, the same press release estimated that in total almost 5,000 Haitians were expected to benefit from the program (MICC, 2012). Thus, slightly more than half of the number of Haitians expected to benefit from the humanitarian sponsorship program have arrived in Quebec. These statistics are significant as they point to the limitations of this program in providing immediate relief to individuals in crisis situations, as the program, while innovative, continues to adhere in most respects to regular processing criteria at the provincial and federal levels which are cumbersome.

Chantal Drolet, Director of the *Direction de l'immigration familiale et humanitaire* at the MICC acknowledged that certain individuals from within the Haitian community were not pleased with the speed at which the applications under the humanitarian sponsorship program were being processed, nor by the fact that very few of these individuals had arrived in Canada one year later. However, she also pointed out that in many instances, the humanitarian sponsorship program was associated or confused with the emergency evacuation measures that are often used following any natural disaster (and were used following the earthquake in Haiti). She specified further noting: « [...] c'était pas un programme d'évacuation d'urgence, c'était pas un programme d'urgence, c'était un programme qui donne accès à la résidence permanente, [...] mais qui dérogeait aux règles

habituelles pour immigrer [...] » (Interview, Chantal Drolet, June 10, 2011, Montreal). This is an important distinction, as it reveals that although the humanitarian sponsorship program was designed in order to respond to the crisis in Haiti, as well as the desperation felt by the Haitian community in Quebec (Interview, Chantal Drolet, June 10, 2011, Montreal), this program was not offering a temporary solution to the plight of displaced Haitians. The program was in fact offering a permanent solution to the devastation and displacement caused by the earthquake for Haitians with family ties to Quebec.

To conclude, it is clear that Quebec's response to the displacement caused by the Haitian earthquake was unique and more generous than the measures put in place by the federal government. The exceptional features of the Quebec special measures, including the establishment of a special humanitarian sponsorship program and the rare non-family co-sponsor accommodations (for both the humanitarian program and family class applications from Quebec residents) are indicative of the importance of the Haitian community to Quebec and the political will that existed to provide a more robust response to this crisis, as these initiatives have never before been undertaken in the province. On the other hand, while Quebec's measures should be applauded, the number of individuals who have benefitted to date from these measures is limited compared to the number of people who submitted applications under this program. This is evidenced by the fact that only 1,230 Haitians had arrived in Canada a year after the earthquake, and 2,600 Haitians had arrived two years later. These statistics demonstrate that although the Quebec special measures were groundbreaking and quite expansive in terms of enabling extended family members to be sponsored, they were not designed in such a way to enable rapid family reunification. Furthermore, in terms of offering immediate protection for the environmentally displaced, the Quebec Special

Measures have not done so, primarily because of the lengthy administrative process and the delays in admitting individuals to Canada who were directly affected by the earthquake. This fact is significant, as it supports the argument made earlier in this research that immigration mechanisms are not necessarily designed in such a way to provide *immediate protection* to individuals affected by natural disasters.

## **Part IV: Federal Special Measures and the Quebec Special Measures Compared**

Based on the previous analysis of the Federal “Special” Measures (Part I and II) and the Quebec Special Measures for Haiti (Part III), it is clear that the federal government and the provincial government of Quebec adopted very different immigration strategies for Haitians following the earthquake, each with their own strengths and weaknesses.

### **Uniqueness of the Measures to the Post-earthquake Context**

The federal immigration measures introduced were all measures that were possible under existing immigration legislation, and had been used following other natural disasters such as the 2004 Asian Tsunami. Consequently, the “special” nature of these measures is questionable as the federal government used ordinary immigration measures to respond to an exceptional circumstance. In contrast, although Quebec’s Humanitarian Sponsorship Program for Haitians was also possible under Quebec’s immigration legislation, this program was exceptional as this was the first time such a program was implemented for a large group of people. In this sense, Quebec’s Humanitarian Sponsorship program would constitute a

very “special” measure adopted by the province. Another factor that rendered Quebec’s response unique was the possibility that a non-familial co-signor could be added to family class, as well as applications submitted under the humanitarian sponsorship program. Although this was possible in the Quebec context, a similar co-signor possibility was not introduced at the federal level, therefore individuals outside of the province of Quebec hoping to sponsor their Haitian relatives had to abide by the normal sponsorship rules in terms of co-signing. Finally, the third element that made the Quebec Humanitarian Sponsorship Program special was the fact that the number of applications being reviewed and processed far surpassed the initial quota that was publicized. In other words, applications received over the 3,000 person quota were not returned to the applicants, but were processed in the same manner as the other applications.

### **Accelerated Federal Processing Times**

One aspect that was special at the federal level was the creation of a special processing office in Ottawa in order to assist the embassy in Port au Prince with the processing of applications. The creation of such an office was certainly unique following the earthquake, and the office sought to process family class applications within a twelve-week timeframe. The creation of a new processing office and the acceleration of processing would qualify as a strength of the federal measures, as a concrete effort was made to meet processing commitments.

While emphasis at the federal level was placed on accelerating the processing of certain applications, one of the major critiques of the humanitarian sponsorship program in Quebec was the lengthy delay in bringing the beneficiaries of this program to Canada. The statistics

are concrete evidence of this, as more than a year after the earthquake just over 1,200 Haitians had been admitted to Canada as a result of this program – less than half the number of individuals who were intended to benefit from this special initiative. This is a significant difference between the federal measures and the Quebec humanitarian sponsorship program, as the latter was not designed to bring about rapid family reunification.

### **Insufficient Fee Waivers Given the Unique Circumstances and Financial Capacity of the Haitian Community**

One area that would qualify as a weakness in both instances is the issue of fee waivers for applicants from Haiti. Throughout the course of interviews with members of the Haitian community, the issue of fees acting as a barrier to individuals benefitting from the measures (both federal and provincially) was raised. Although certain fees were waived by the federal government, a positive development, the high fees associated with family class applications as well as the right to permanent residence fee were not waived. In Quebec, fees were not waived as part of the province’s immigration strategy. Instead of waiving fees, the initiative that enabled a co-signor on the applications was designed to help alleviate the financial burden on the applicants.

A measure similar to Quebec’s co-sponsorship initiative was considered at the federal level (CIC, ATIP Request, p.46; see Appendix L). The recommendation made in this case was “[...] that no federal measure beyond existing authorities be introduced” (CIC, ATIP Request, p.46). A number of justifications were used to support this recommendation. These included:

- 1) The (supposed) lack of clarity as to whether the “[...] current financial criteria for family class sponsorship will operate as a barrier to Canadian citizens and permanent residents who wish to sponsor their family members for immigration”
- 2) The fact that most Haitians live in the province of Quebec
- 3) The lack of historical success of “co-sponsorship arrangements”
- 4) Concerns about adding to operational pressures
- 5) Concerns regarding the creation of “an unnecessary precedent” in the wake of other natural disasters.

(CIC, ATIP Request, p.46, 47).

The recommendations made on this particular issue represent important research findings. Regarding the lack of clarity as to the financial capacity of the Haitian community – it is clear that this statement was based on very little research into the financial capacity of the community in Canada. A simple “google” search on the financial capacity of the Haitian-Canadian community leads to a report by Statistics Canada on this topic. This report notes the following: “Canadians of Haitian origin are much more likely to have incomes that fall below Statistics Canada’s Low-income Cut-offs. In 2000, 39% of all those who reported they had Haitian origin lived in low-income situations, compared with 16% of the total Canadian population” (Statistics Canada, 2007, Section: “Many With Low Incomes”). Although this data is somewhat dated, even in speaking with members of the Haitian Canadian community, many pointed to the financial barriers in using the measures. Finally, these recommendations indicate clearly the federal government’s desire to avoid setting any precedents that could be raised in the event of future natural disasters. This is important as it indicative of the lack of a humanitarian focus, and pre-occupation with the potential of creating expectations in the wake of future natural disasters.

## Part V: The Haitian Diaspora – The Influence of a Critical Mass

[...] oui, la Diaspora a aidé. Mais on sentait que c'était un coup de cœur aussi venant du peuple canadien [...] cette solidarité on se sentait, [...] on a vu combien le Canada et Haïti était proche. [...] on a contribué aussi, mais comme si c'était de façon spontanée que le Canada a compris qu'il fallait faire quelque chose (Interview, Ninette Piou, June 17, 2011, Montreal).

One of the primary research questions of this thesis pertains to the degree to which the Haitian Diaspora influenced the adoption of the special measures at the federal level as well as the provincial level in Quebec. However, it was difficult to ascertain precisely the degree to which the Haitian community influenced the adoption of these measures due to some of the methodological challenges encountered during the research process. For example, it was difficult to obtain participation at the federal level from individuals involved in the policy-making process. Participation from this level of government was crucial to understanding the ways in which the federal government either did, or did not engage the Haitian community while the measures were under consideration (in Canada as a whole and in the province of Quebec). In addition, I did not receive my second *Access to Information* request pertaining to the measures in Quebec prior to November 2011. Within the *Access to Information* request package that I did receive, there were references to the significant Haitian community in Canada (ATIP Request, p.459, 729). Furthermore, several documents also repeated the fact that “Canada has strong ties to Haiti, with approximately 150,000 Canadians being of Haitian descent, many in the Montreal area” (CIC, ATIP Request, p. 418, 729). These statements confirm the importance of the Haitian Canadian community to Canada as a whole; however,

these statements alone do not provide an adequate picture as to the influence of the Haitian Diaspora in Canada on the federal government.

Although it is difficult to understand the influence of the Haitian Diaspora on the federal measures implemented, one of my research participants, Gerard Etienne, a Canadian of Haitian origin and public servant with the federal government, made some interesting comments regarding the existence and organization of the Haitian Diaspora in Canadian provinces other than Quebec. He stated:

I don't think I could say to you that, outside of Quebec, we truly have a Diaspora. For example, Montreal still has two or three community centers; they have radio shows. They have a number of cultural establishments that are much stronger. I was in Toronto for three years and the Haitian community is virtually non-existent, although there is (sic) Haitians in Toronto, but they are not regrouped as a unified entity. In Ottawa, we have better luck and I think it's because maybe the density is much more. Elsewhere in Canada I don't know if there is such a thing as a Haitian community. If you were to look at Diaspora you would have to say Montreal, Miami, and New York. So on the Montreal front, they are extremely well organized in terms of a community, but not organized in terms of political voice [...].

Mr. Etienne's comments are significant, as he himself points to the fact that an organized Haitian Diaspora is virtually non-existent in regions of Canada other than Montreal. In this sense, it is logical to focus on the potential influence exerted by the Diaspora in Montreal given that a unified and organized Diaspora outside of the province of Quebec seems to be non-existent.

In terms of the degree to which the Haitian Diaspora in Quebec, and Montreal more specifically influenced the provincial measures adopted, I conducted a number of different interviews that have given me a better understanding of the influence of the Haitian Diaspora in Quebec on the special measures adopted. In the following section, it is argued that the

large Haitian community in Quebec may not have directly influenced the adoption of the measures, but its presence in the province certainly played an important role in their adoption. To begin, the size of the Haitian community in Quebec is considered. Secondly, the existence of a political will to respond following the earthquake is examined in relation to the influence of the Haitian Diaspora. Thirdly, the outcome of governmental meetings with the Haitian community is highlighted. Finally, the differing views on the degree to which the Haitian Diaspora was influential in this instance are examined.

### **The Haitian-Canadian Community: Concentrated in Quebec**

In 2006, 89.2% of the population of Haitian origin living in Canada was concentrated in the province of Quebec (which equated to 91,435 people of 102,430<sup>49</sup> living in Canada), and 93.8% of individuals of Haitian origin living in Quebec were concentrated in the city of Montreal (Statistics Canada, 2006 a,b,c,d).

The strong connection between the Canadian province of Quebec and Haiti is demonstrated even further by first generation immigration statistics. In 2006 alone, 56,750 immigrants living in Quebec reported Haiti as their birth country out of a total of 63,350 Haitian immigrants living in Canada (MICC, 2009, p.73). Of the Haitian immigrants living in Quebec, 94.7% were concentrated in the city of Montreal (MICC, 2009, p.73). The concentration of the Diaspora in this city is due to the fact that Montreal represents “[...] the largest Francophone metropolis in the Americas [...]” making this city “[...] a natural

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<sup>49</sup> It is important to note that this figure, which dates to 2006, differs from the figure of 150,000 cited in CIC, 2010 documents (CIC, ATIP Request, p.418, 729).

destination for the largely French and Creole-speaking Haitians” (Carment & Bercuson, 2008, p.60).

### **The Haitian Community in Quebec – An Important Sector of the Electorate**

The size and importance of the Haitian community in the province played a role in the adoption of the special measures in Quebec. Participants in the research interviews underscored this influence. One of the common themes that emerged from several of the interviews was that Quebec *had* to do something to respond to this crisis. For example, Marjorie Villefranche noted that due to the importance of the Haitian community in the province, the Quebec Government *had* to respond to the pressure and the desperation of the community following this devastating natural disaster (Interview, May 5, 2011, Montreal). Another research participant, Me Isabelle Dongier made the following statement concerning Quebec’s response:

[...] je pense que de façon générale, ce qui a été apprécié, cette fois-ci avec Haïti, c’est le fait que Québec a fait des mesures plus élargis que celles du fédéral. ***Mais je pense que Québec politiquement n’avait aucun choix.*** Parce que il y a une grosse communauté haïtienne au Québec, et Immigration Québec [...] ne pouvait pas résister [...] à la pression [...]. ***Notre communauté haïtienne est vraiment très importante.*** Donc, maintenant Québec aurait pu être rigide et dire non, écouter nous on doit suivre le programme fédéral. Ils ont fait preuve [...] d’une certaine créativité disons. Ils sont allés plus loin de ce que le fédéral était prêt à faire, et d’un certain sens politique je pense qu’ils ont compris qu’il **fallait le faire pour satisfaire leur électorat** (*emphasis added*; Interview, April 5, 2011, Montreal).

Me Dongier’s statement underscores not only the importance of the Haitian community in Quebec, but also the underlying political interests that the Quebec Government had in opposing the federal stance on this issue and responding in its own unique way in order to

meet the demands of an important group of the Quebec electorate. Marlene Rateau, President of the *Bureau de la communauté haïtienne de Montréal* (BCHM), also noted that the Haitian Diaspora did influence the establishment of the measures because within this group there are people who vote. She noted: “là ou il y a des gens qui vote, il y a toujours une possibilité d’avoir une influence ” (Interview, Marlene Rateau, July 20, 2011, Montreal).

### **Interconnected Nature of the Haitian Diaspora in Quebec**

Another element that may have played a role in the adoption of special immigration measures in the province of Quebec was the integration and interconnected nature of the Haitian community with Quebec society as a whole.

Certain research participants highlighted the interconnected dimension of the Haitian community. For example, Chantal Drolet of the MICC pointed to the integration of this community in Quebec society, noting that the Haitian Diaspora and its members have been in the province for a long time, and that something had to be done in response to the desperation of the community following the earthquake (Interview, June 10, 2011, Montreal).

Marjorie Villefranche also suggested the connected nature of the Haitian Diaspora to the Quebec community played a role in the adoption of the measures in Quebec. Villefranche noted the following with respect to the linkages between the Haitian Diaspora and the Quebec community:

Ce n'est pas une diaspora qui parle seule. C'est une diaspora qui parle avec la communauté québécoise. Parce que c'est une diaspora qui est imbriquée dans les organisations québécoises. [...] Et c'est quelque chose de dire qu'on n'est pas des petits orphelins, on fait partie de votre société. C'est une partie de la société québécoise qui demande quelque chose. Ça légitime la demande (Interview, May 5, 2011, Montreal).

Marjorie Villefranche's depiction of the Haitian Diaspora in Quebec is indicative of the way in which this community is highly integrated with different organizations in Quebec. Furthermore, her articulation also highlights the fact that the Haitian Diaspora is also an important part of the larger Quebec society. This finding is significant, as it relates more broadly to different ways in which the Haitian Diaspora is able to exert influence on the domestic politics of their host countries. Michel Laguerre (2006) points to the varying influence of the Haitian Diaspora in domestic politics of the host country, noting that Haitians in host countries:

[...] relate differently to Haiti because of the size of the different diasporic communities, the greater or lesser influence that they may have over the politics in each state, and the different policies of each state, which allow the diasporans to intervene successfully in one setting, but not in another (p.6).

In the case of the Haitian Diaspora in Quebec, it is clear that the size and concentration of this community played a role in the adoption of the special measures program. At the same time, it is also apparent that the Haitian Diaspora in Quebec is not a separate entity, but rather the Haitian Diaspora is interconnected in Quebec society and has established roots in the wider Quebec community. These interconnections have also proved important to creating a sense of solidarity with Canadians of Haitian origin in the province.

## **Pre-existing Political Will in the Province of Quebec**

Although the existence of a large Haitian Diaspora in Quebec undoubtedly played a role in the adoption of a special measures program in the province, this community did not necessarily have to exert a lot of pressure in order to have a set of measures adopted by the province of Quebec due to a pre-existing political will to respond in this situation.

Chantal Drolet of the MICC noted that Quebec's program was adopted not only to respond to the crisis in Haiti, but also to respond to the desperation of the Haitian community in the province. She articulated some of the reasons for the adoption of the measures noting: “ [...] je pense que compte tenu de la présence de la diaspora, il y a eu une sensibilisation des autorités politiques, et [...] le gouvernement a voulu y répondre [...] puis [...] on sentait que la société québécoise était solidaire aussi. Il y avait comme une volonté je dirais de faire quelque chose” (Interview, June 10, 2011, Montreal). In Drolet's opinion, the existence of a large Haitian Diaspora in Quebec did influence the adoption of the measures in the province (Interview, June 10, 2011, Montreal).

At the same time, Drolet also pointed to the fact that the political will existed to put in place measures to respond to this crisis, and therefore there wasn't as much need for the community to lobby the government in order to have a program adopted in the province (Interview, June 10, 2011, Montreal). This is significant, as Drolet's comments point simultaneously to the fact that the Haitian community, while being very important to the province of Quebec, did not have to lobby heavily (or exert its influence) to have the measures adopted (Interview, June 10, 2011, Montreal).

Ninette Piou, President of the *Conseil National des Citoyens et Citoyennes d'Origine Haitienne (CONACOH)* also echoed Madame Drolet's sentiments regarding the need to lobby the government to adopt measures. She suggested that the Haitian Diaspora certainly helped in bringing about the adoption of measures, but at the same time there seemed to be a comprehension on the parts of both the federal government and Quebec's provincial government that something had to be done in response (Interview, Ninette Piou, June 17, 2011, Montreal). Piou noted the following regarding the willingness of both the federal and the provincial governments to adopt measures following the earthquake: "Ils étaient déjà en mode d'écoute, donc nos propositions étaient les bienvenues. Mais les propositions ils les ont reçus, mais ils les ont mis à leur façon, ils les ont façonnées. [...] On a pas eu à faire pression pour que cette ouverture la soit faite, il y avait déjà ouverture" (Interview, June 17, 2011, Montreal).

These comments are revealing as to the degree of influence the Haitian Diaspora in Quebec exerted on both the provincial and federal governments. Due to the existence of the political will to respond following this natural disaster, heavy lobbying was not needed on the part of the Haitian Diaspora in order to see the measures adopted. Therefore, the existence of a large Haitian Diaspora in Canada was most likely an influencing factor on the adoption of the measures, rather than the Haitian Diaspora having to exert significant influence (through lobbying, meetings and demonstrations for example) in order to see measures adopted.

## Consultations “In Name Only”

Another point that indicates that the Haitian Diaspora may not have influenced the specifics of the measures adopted is the nature of the “consultations” with the Haitian community that occurred following the earthquake. According to my research participants, a number of meetings did take place in the days following the earthquake with political officials (both federally and provincially) to discuss the special measures.

For example, on January 15<sup>th</sup>, a delegation of representatives from the Haitian community in Ottawa and Montreal attended a meeting with Prime Minister Stephen Harper and the Minister of Foreign Affairs to discuss the situation in Haiti, and the possibility of adopting special measures for the country (Interview, Ninette Piou, Interview, June 17, 2011, Montreal). Ninette Piou, President of the CONACOH was part of the delegation that participated in this meeting. Piou noted that in this meeting, the requests of the community were laid out, and that the Prime Minister reacted promptly, initiating certain special immigration measures on January 16 (for example allowing individuals already in Canada to extend their stay). While appreciative of these measures, Piou also noted that what had been requested were measures that would have benefitted people in difficult situations **in Haiti**, rather than people who were already in Canada (Interview, June 17, 2011, Montreal). This example demonstrates that while meetings occurred, and perspectives from the Haitian community were voiced, the measures that were ultimately adopted were not entirely in line with what had been requested.

In addition to a meeting with Prime Minister Harper, a few meetings occurred with the Haitian community where the Minister of Citizenship and Immigration Jason Kenney was present (Interviews with: Ninette Piou, June 17, 2011; Marlene Rateau, July 20, 2011; Gerard Etienne, June 27, 2011). Gerard Etienne pointed out however, that Minister Kenney never met with the Haitian constituents in the Ottawa region, but rather met with the community in Montreal (Interview, June 27, 2011, Ottawa). Meetings also took place with officials from the Quebec Government. For example, on the 14<sup>th</sup> of January, then Minister of Immigration in Quebec, Yolande James was invited to a meeting at the CONACOH offices (Interview, Ninette Piou, June 17, 2011, Montreal). In this meeting, CONACOH requested that the family reunification process be accelerated, and that the definition of what constitutes a family member be expanded (Interview, Ninette Piou, June 17, 2011, Montreal). CONACOH also requested that temporary residents, visitors and refugees be allowed to remain in Canada given the circumstances in Haiti. Another suggestion included to grant public servants and working professionals paid leaves of absence from their positions so that they could go to Haiti in order to offer their assistance following the earthquake (Interview, Ninette Piou, June 17, 2011, Montreal). Finally, M. Emmanuel Dubourg, who is currently the only Member of the National Assembly in Quebec of Haitian origin, was appointed by Premier Jean Charest to act as a coordinator between members and organizations within the Haitian community. Chantal Drolet of the MICC confirmed that consultations with the Haitian community in Quebec took place following the earthquake primarily at the political level with M. Dubourg (Interview, June 10, 2011, Montreal).

Although meetings were held between officials from both the federal and provincial governments and the Haitian community to discuss the special immigration measures for

Haitians following the earthquake, some research participants noted that these meetings were not “consultations” in the true sense of the word. In this sense, the Haitian community did not necessarily have the opportunity to exert an influence on the specifics of the measures adopted. For example, Marlene Rateau of the BCHM questioned whether or not the meetings held with the different officials following the earthquake could really be considered “consultations” with the Haitian community (Interview, Marlene Rateau, July 20, 2011, Montreal). In the same vein, Marjorie Villefranche noted: “[...] je ne peux pas dire qu’on a été « consulté ». Ils nous ont rencontrés, **ils ne nous ont pas demandé notre avis**. Ils nous ont dit ben voilà, voilà, voilà, voilà. Je n’appelle pas ça une consultation. Mais oui, ils nous ont rencontrés plusieurs fois” (Interview, May 5, 2011, Montreal; *emphasis added*). The perceptions of certain representatives of the Haitian community regarding whether or not they were consulted is important, and helps to support the argument that although the presence of a large Haitian community in the country was influential on bringing about the adoption of special immigration measures for Haitians, the extent to which the Haitian community was actually consulted and was able to influence the nature and type of measures adopted was limited.

### **Political Positioning – A Vital Component of Influence**

One aspect that plays a role in explaining the degree to which the Haitian Diaspora in Quebec influenced the adoption of the special measures is the way in which the Diaspora is organized, and the ways in which members of the Diaspora are politically interconnected. Throughout the course of the interview component of this research, certain participants made some interesting remarks about the organization of the Haitian community.

For example, Gerard Etienne noted that the Haitian Diaspora in Montreal was: « [...] extremely well organized in terms of a community, but not organized in terms of political voice [...] » (Interview, June 27, 2011, Ottawa). Similarly, Marlene Rateau suggested that the Haitian community did not have enough individuals well situated within the governmental administration to be able to exert a big influence. She stated:

[...] par exemple, [...] la communauté italienne elle a plus de gens qui sont dans les gouvernements, qui sont ministres. Même la communauté hellénique aussi [...]. Mais je ne pense pas que dans la communauté haïtienne [...] peut-être qu'on est trop jeune aussi - on n'a pas encore cette pénétration de l'administration des gouvernements qui peut faire la différence dans la manière d'influencer les choses. On n'est pas rendu là (Interview, Marlene Rateau, July 20, 2011, Montreal)

Rateau explained further: “Il faut avoir un pied dedans, [...] et être bien vu. [...] Être un Dimitri Soudas [...]. Ça n'existe pas. On ne peut pas exercer une grosse influence quand on n'a pas les pieds à l'intérieur de l'appareil”. The comments made by Mr. Etienne and Madame Rateau are extremely interesting and hit on an important topic. While the Haitian community in Quebec may have been influential on the adoption of a set of measures due to its size and interconnections within Quebec society, the significance of the influence may not have been as great due to the fact that members of the community are not as interconnected politically.

### **Divergent Approaches Federally and Provincially – Evidence of the Important Haitian Community in Quebec**

The divergent approaches taken by the Quebec provincial government and the Canadian federal government in terms of expanding family sponsorship criteria, and allowing co-

sponsors on applications is also indicative of the importance of the large Haitian Diaspora in Quebec. The federal government ignored calls to expand family sponsorship criteria nationwide. Calls were made by a number of different actors, including some community groups within the Haitian Diaspora. For example, a few days after the earthquake, on January 19, *La Table de concertation des organismes au service des personnes réfugiées et immigrantes (TCRI)* in conjunction with *la Maison d'Haiti*, and *le Conseil national des citoyens et citoyennes d'origine haïtienne (CONACOH)* released a joint statement calling on both the federal government and the Quebec provincial government to set up a special program for Haiti (TCRI, 2010, Jan. 19). One of the specific appeals was for family sponsorship eligibility criteria to be expanded (not just for the province of Quebec, but for Haitians across Canada)(see TCRI, 2010, Jan. 19; see also CBC News, 2010a). In addition, at a meeting of the House of Commons Standing Committee on Citizenship and Immigration on April 27, 2010 certain members of the Haitian-Canadian community called on the government to put forward a more consistent approach, or suggested that other provinces follow the Quebec example (Parliament of Canada, 2010, Apr. 27 - see statements by Ms. Micheline Cantave and Mr. Joseph Jean-Gilles).

Members of Parliament including NDP MP Olivia Chow, Liberal MP Mauril Belanger and then Liberal Opposition Leader Michael Ignatieff also made calls on the Harper government to expand sponsorship criteria federally (see: House of Commons Debates, 2010, Mar. 12 for Mauril Belanger's comments; Chow, 2010). Michael Ignatieff noted the following with respect to the expansion of family sponsorship criteria: "We think we must widen, for the Haiti crisis, the definition of family. So that Haitian families can bring in brothers, sisters, nephews. We must soften the rules for humanitarian reasons" (qtd in Clark, 2010, par. 12).

In addition, CIC was asked to consider allowing the co-sponsor exception for Haitians outside of the province of Quebec sponsoring relatives under the family class (CIC, ATIP Request, p.46). However, in a recommendation memorandum to the minister on this issue, it was recommended “[...] that no federal measure beyond existing authorities be introduced. The majority of Haitians reside in Quebec and will be able to take advantage of that provinces (sic) special measure” (CIC, ATIP Request, p.46, see Appendix L). Thus it is clear that federally, the government was relying on the fact that most Canadians of Haitian origin live in Quebec, and therefore deemed that exceptional measures were not warranted or necessary for other provinces.

In response to appeals to make exceptions in immigration policy for Haitians, Minister of Citizenship and Immigration Canada, Jason Kenney noted that:

Massive resettlement is not a solution to natural disaster. The solution is reconstruction, and we’re focused and dedicated to that. [...] Consistency and fairness are fundamental principles of immigration [...] It is a very big mistake to start ad-hoc’ing immigration policy and changing the law when faced with different events [...] We have a moral obligation to be consistent. [...] (qtd in The Canadian Press, CTV.ca, 2010, Jan. 20)

Minister Kenney’s comments made clear that the federal government would be unwilling to make exceptions in its immigration policy in order to maintain a consistent response in the face of future natural disasters that may occur worldwide. Throughout the course of an interview, Gerard Etienne made the following remarks concerning the argument that if immigration policies were modified for Haiti they would have to be modified for other countries:

**Being fair doesn't mean treating everybody the same.** The next time you have a country like Haiti, in the same situation with the same conditions. Yeah do it. The reality is there was a massive Tsunami and earthquake in Japan. We didn't change our immigration laws for Japanese because it wasn't necessary. There was an earthquake in Chile. We didn't change our immigration laws for Chile because it wasn't necessary. There will be other earthquakes. The Haitian situation is unique. So you could have bent the rules, you could have changed the rules [...] (*emphasis added*; Interview, June 27, 2011, Ottawa).

Etienne's comments are thought provoking, and he rightly points out that following several natural disasters that occurred after the earthquake in Haiti, the Canadian government made no immigration policy modifications. This fact is significant as it points to the fact that in Canada, immigration measures and public policies are implemented following natural disasters to respond to each situation **individually**, based on the needs of the country in question. In 2010/2011 there were a number of devastating natural disasters that occurred as Mr. Etienne mentioned, but the immigration policies introduced were clearly not all the same. In this sense, Canada's approach is already inconsistent in the wake of natural disasters.

In the Haitian case, the federal government, by ignoring calls to expand sponsorship criteria following the earthquake, rendered the pan-Canadian approach inconsistent because of Quebec's ability to pursue its independent initiative to expand sponsorship criteria for Haitians residing within Quebec. Member of Parliament Mauril Belanger pointed to the consequences of this inconsistent approach noting:

Many members of Ottawa's Haitian community are faced with the possibility of having to sell their homes and move to Gatineau if they want to sponsor a family member who is over 18, for example. Does the government realize how unfair this is and the impossible situation it is putting people in? (House of Commons Debates, 2010, Mar. 12).

This example presented by Mr. Belanger demonstrates the conflicting nature of the federal and provincial governments' approaches to this crisis, and the impact of this incompatibility on Haitians living minutes from the Ontario/Quebec border.

The fact that the federal government was very clear that it would not modify its immigration policy, and the fact that the Quebec government felt the need to do so is telling as it demonstrates the important presence of the Haitian community in the province of Quebec.

Given the substantially lower numbers of individuals of Haitian origin living in other Canadian provinces (only 10,995 people according to 2006 census data (see Statistics Canada, 2006, a,b,c)), the federal government could have responded in a manner that was consistent with Quebec's response, without receiving an unmanageable number of applications (given that only a certain percentage of the individuals living outside of Quebec would have been adults of the age and means to be eligible to sponsor a family member). This possibility was also echoed by Marjorie Villefranche, who noted that the program could have been expanded nation-wide as the numbers of individuals who could have sponsored family members was relatively low (Interview, Marjorie Villefranche, May 5, 2011, Montreal). Despite this fact, several CIC documents, in response to the idea of expanding family class criteria for other provinces, cited that the volumes of applications that this would create, as well as the costs associated with the integration of these individuals would be "unmanageable" (CIC, ATIP Request, p.333). For example, one letter to the editor included in the *Access to Information* release package noted the following: "If we expand our family class criteria to allow for sponsorships of extended relatives, our government, as well as

those of provinces, territories and communities in Canada, would not be able to manage the application volumes that could result” (CIC, ATIP Request, p.282). While expanding the family class sponsorship criteria for Canadians of Haitian origin nation-wide (including in Quebec) may have created unmanageable volumes of applications, it is difficult to argue that offering a measure equivalent to Quebec’s humanitarian sponsorship program for the 10,000 or so Canadians of Haitian origin living outside of Quebec would have created an unmanageable amount of applications. The federal government tried to publicly spin this dilemma as a problem related to expanding family class criteria, but other possibilities could have been used for individuals residing outside of Quebec, and these alternatives were even considered at the federal level. For example, one information memorandum to a Deputy Minister at Citizenship and Immigration Canada noted that “[...] requests for more flexible co-sponsorship arrangements or for sponsorship of siblings and non-dependent children could be addressed using section 25 of IRPA, either through case-by-case H&C consideration, *or through a public policy designed to be similar to what Québec is proposing*” (*emphasis added*; CIC, ATIP Request, p.140). However, the same document later underlines some of the concerns with such an alternative noting that the “introduction of a public policy would be *precedent setting*, contrary to the position the government has taken thus far and would likely attract requests for similar public policies in the future” (*emphasis added*; CIC, ATIP Request, p.140).

The lower numbers of individuals of Haitian origin outside of Quebec, and the unwillingness of the federal government to expand sponsorship criteria or implement a public policy may point to the lesser degree of influence that members of the Haitian Diaspora outside of Quebec were able to exert on the adoption of the measures. Gerard Etienne, suggested that

one of the reasons that there was probably not as much “noise” from the Haitian community outside the province of Quebec when sponsorship criteria was not expanded was due to the fact that this part of the community in Canada focuses primarily on the actions taken by the federal government. Furthermore, he suggested that it was due to a lack of understanding of Quebec’s “latitude” which enables it to have some authority over immigration policy decisions (Interview, Gerard Etienne, June 27, 2011, Ottawa).

## **Summary**

Based on this elaboration it is clear that Quebec’s provincial government felt the need to put in place a special immigration program for Haitians following the earthquake due to the concentration of this community in Quebec, its important and connected place within Quebec society, and to respond to calls from the Haitian community to adopt exceptional measures to respond to this crisis. The very fact that Quebec’s special measures were so different and more expansive than the measures adopted federally is evidence that the Quebec government felt compelled to respond following the earthquake with a different approach than the one taken by the federal government. At the same time, it is important to note that the political will to respond in this instance seemed to be present, and thus there was not a great need for the Haitian Diaspora to exert pressure or lobby the government to respond. In this sense, the Diaspora did not necessarily directly impact the adoption of the special measures program in Quebec. Finally, the fact that the Haitian community was not necessarily “consulted” also points to the fact that the degree to which the community could influence the particularities of the measures was limited.

## Conclusion

Canada adopted a variety of immigration measures following the Haitian earthquake in order to respond to the displacement and devastation caused by this natural disaster. Canada's federal immigration measures were multi-dimensional, in that a broad range of immigration mechanisms were used. For example, temporary resident permits and visas were issued, temporary resident extensions were granted, fees were waived in certain (limited) categories, and family class processing was accelerated (CIC, 2010, Jan. 15; CIC, 2010, Jan. 16). While a number of measures were introduced, many of the measures adopted federally did not constitute "special" measures as they were all legislated under Canada's immigration legislation. Furthermore, Canada has responded in the past with similar immigration measures following other natural disasters, including for example the 2004 Asian Tsunami (CIC, 2010, Jan. 20 – Overview of Special Measures Taken in Natural Disasters). However, it should be noted that based on the statistics presented concerning the Canadian immigration measures applied following the Haitian earthquake versus those applied following the Asian Tsunami, the scope of the Canadian response was much larger following the Haitian earthquake.

An important finding that came out of this research was the fact that the complementary protection mechanisms that exist in Canada, including the moratorium on removals mechanism, protected person status and humanitarian and compassionate considerations were not the primary mechanisms used in Canada's immigration response for Haitians. This research finding is significant as it points to some of the weaknesses of the complementary protection mechanisms available in Canada, and their ability to effectively respond to a

natural disaster situation. Furthermore, the heavy reliance on immigration mechanisms rather than complementary protection mechanisms underscores an important protection gap for the environmentally displaced, as the mechanisms that are designed to assist individuals who are in need of protection as a result of exceptional circumstances (for example natural disasters) are not sufficient to adequately respond to a crisis situation.

The most distinctive element of the Canadian response was its multi-level nature due to the special measures adopted by the province of Quebec. Quebec's Humanitarian Sponsorship Program and non-family co-sponsor initiatives were innovative and could be considered very "special" measures. These measures were unique to the post-earthquake context, as they had never before been applied for a large group of people, and were designed to take into account the financial capacity of the Haitian community in Canada (Interview, Chantal Drolet, June 10, 2011, Montreal). The Canadian response to this particular crisis, showed signs of a clear divergence between the federal response, where no "special" program for Haitians was introduced and no real modifications were made to immigration rules, and Quebec's response, where a separate sponsorship program was created uniquely for Haitians, and whereby certain co-sponsorship rules for the family class were modified. These divergent approaches were problematic, as the pan-Canadian immigration response was rendered inconsistent. Practically speaking, these differing approaches meant that Haitian Canadians in Gatineau could sponsor their adult brothers or sisters whose lives were significantly affected by the earthquake, whereas Haitian Canadians in Ottawa, living just minutes from Gatineau, could not. Despite pressure on the federal government to follow Quebec's lead in adopting unique and more expansive measures for Haitians (CIC, ATIP Request, p.318, 331, 392), there was an unwillingness to do so for fear of setting a precedent, as well as the

potential operational pressures and costs (CIC, ATIP Request, p.140, 282, 333). I would also hypothesize that there was a resistance to adopting a federal public policy that would have enabled measures similar to those adopted in Quebec, simply because of the negative “optics” this would have created, with Canada following Quebec’s “lead” and not the other way around.

Although Quebec’s Humanitarian Sponsorship Program was very innovative, and the province should be applauded for thinking “outside of the box” in responding to this unexpected disaster, the program itself was not without its limitations. One of the main critiques of the program was that the application process was lengthy, and over a year and a half later, of the 3,000-person quota initially promised, very few Haitians had arrived in Canada. Therefore, like the immigration measures adopted at the federal level, Quebec’s humanitarian sponsorship program is also evidence that immigration measures are generally not designed to respond in an expedited way to the sudden displacement caused by a natural disaster.

The influence of the Haitian Diaspora on the federal and provincial measures adopted following the earthquake was difficult to ascertain. The size of the Haitian Canadian community was considered by the **federal government** when implementing its set of immigration measures. However, the federal government’s primary focus was on the concentration of the Haitian – Canadian community in Quebec. In the province of Quebec, the evidence suggests that the Haitian Diaspora represented an important sector of the electorate in the province, and the presence of such a large Haitian community may have created a climate open to the adoption of a special set of measures. However, the evidence

also suggests that while the Haitian Diaspora represents an important population group within Quebec society, the influence that the Diaspora was able to exert at the political level, and on the specific details of the measures adopted may have been limited.

Throughout the course of my interviews with representatives from the Haitian community, the research participants were asked what types of measures they would have liked to see adopted following the earthquake. One idea that was raised by several respondents was to allow Haitians to come to Canada immediately in order to complete the processing of their applications for sponsorship here rather than waiting in Haiti for the steps to be finalized (Interviews: Ninette Piou, June 17, Montreal; and Marjorie Villefranche, May 5, 2011, Montreal). Allowing Haitians to come to Canada immediately to finalize the processing of their sponsorship applications would not have been a groundbreaking initiative, as Canada has already taken this type of approach in response to the Kosovo crisis in 1999 (Interview, Ninette Piou, June 17, Montreal). Canada participated in a UNHCR/IOM led resettlement program, and 7,271 Kosovars were accepted for “immediate settlement” in Canada in 1999 (Sherrell, Hyndman & Preniqui, 2004, p.5; UNHCR, 1999, p.345). The program was designed to provide **temporary protection** to those displaced by the conflict, however Kosovars resettled in Canada were given **the opportunity to remain in Canada permanently** (Sherrell et al, 2004, p.5; UNHCR, 1999, p.345; Treviranus & Casasola, 2003, p.192). Canada’s participation in The Humanitarian Evacuation Program for Kosovars is evidence of the fact that Canada has, in recent history, made significant exceptions in terms of enabling family reunification processes to be finalized in Canada rather than from abroad. Furthermore, the Kosovo Family Reunion Program was not just for a few hundred people, but rather served to bring over 2000 people to Canada immediately. Thus, the suggestion that

Haitians undergoing sponsorship applications be allowed to enter Canada while their applications are being processed is not one that goes beyond what Canada has already done in another exceptional circumstance. Haitian Canadians, as well as Haitians in need following the earthquake would have benefitted from a more broad-based humanitarian focus in the development of immigration policy.

This research project focused primarily on the immigration aspect of the Canadian response for Haitians and Haitian Canadians, rather than the long-term development implications of these measures. Although the development implications for Haiti were not the focus of this research project, it would be an interesting field of study to explore. In an interview with one of my research participants, Marlene Rateau, she mentioned that while she agreed with the idea of allowing Haitians to come to Canada on a temporary basis, she was torn as to whether or not facilitating the “exodus” of people and the drain of resources from Haiti through family reunification programs in Canada was “the right thing to do” (Interview, July 20, 2011, Montreal). She pointed to the fact that following the earthquake, Haiti is most in need of its human resources to help rebuild the country, and that the individuals who were able to benefit from the measures were those who were the most able to help rebuild Haiti (Interview, July 20, 2011, Montreal). To Rateau, the whole question of immigration from Haiti following the earthquake represented a moral dilemma. Even before the earthquake, the “brain drain” was considered to be a significant problem in Haiti, as it is estimated that over 80% of Haiti’s emigrants are highly skilled (Carment & Bercuson, 2008, p.61; Kapur & McHale, 2006, p.306).

One of the challenges of researching such a current topic is that the information and statistics were ever-changing, and continue to change to this day. While the statistics presented in this analysis cover the year 2010, and in some cases up to March 31, 2011, it will be necessary to follow closely the annual statistics concerning the number of Haitians entering Canada over the next few years as a result of the immigration measures put in place following the earthquake. I would hypothesize that given the number of applications still being processed under the Quebec special measures in 2011, future statistics pertaining to Haitian permanent resident applications and entries to Canada will continue to be high. The ripple effect of these measures in the coming years, and decades would also provide an interesting area for future research.

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## **Appendix A: ATIP Request #1**

*NB: This was the original ATIP request submitted in April 2011. I was strongly encouraged to revise and narrow this request in order to avoid lengthy consultation extensions. See revised request Appendix B.*

Attention:

This letter is to request information from Citizenship and Immigration Canada under the Access to Information Act.

**Federal Institution:** Citizenship and Immigration Canada

**Description of records requested:**

- All information pertaining to Haiti within the date range January 11, 2010 to present (including, but not limited to: statistics, CIC policy documents, recommendation and decision memorandums, email correspondence, statements regarding special immigration measures for Haiti).
- Information related to Canada's special immigration measures for Haitians implemented following the earthquake on Jan. 12, 2010. Including:
  - o Expediting the processing of family sponsorship applications for Haitians (including statistics on how many applications have been received since the earthquake, how many applications were already in progress prior to the earthquake, and how many applications have been processed, denied, approved since the earthquake).
  - o Extending the time period of stay for temporary residents. Requesting statistics on how many temporary resident visas and permits have been issued for Haitians since the earthquake. Requesting also statistics on how many temporary residents from Haiti were in Canada prior to the earthquake (2009).
  - o Expediting the issuance of permanent resident visas for Haitians (including statistics on how many permanent resident visas have been issued since the earthquake). Requesting also statistics on permanent resident visas issued to Haitians in 2009.
  - o Stay of removals for Haiti, or moratorium on removals for Haiti (including statistics on how many Haitians were covered by moratorium prior to the earthquake (since 2004), and after the earthquake).
- Any information related to the Quebec Special Measures for Haiti and discussions/correspondence surrounding any possible expansion of the federal family class,

and the expansion of Quebec's family sponsorship criteria for Haitian applicants.

- Any information related to consultations with the Haitian Community in Canada and/or the Haitian Diaspora over the special immigration measures to be implemented.

**Method of viewing:** Photocopies of original documents

**Name of applicant:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Date of Request:** April 7, 2011

Signature of applicant: \_\_\_\_\_ Date: \_\_\_\_\_

## **Appendix B: ATIP Request #1 Revised**

***NB: This revised ATIP Request was extended for a period of 210 days, beyond the 30-day statutory time limit, for a total of 240 days. The documents requested (a total of 785 pages, over 200 of which were exempt) were received on October 1, 2011.***

Attention:

This letter is to request information from Citizenship and Immigration Canada under the Access to Information Act.

**Federal Institution:** Citizenship and Immigration Canada

**Description of records requested:**

- Documents pertaining to the special immigration measures for Haiti within the date range **January 12, 2010 to December 31, 2010.**
- Specifically requesting the following documents:
  - CIC policy documents as well as recommendation and decision memorandums, briefing documents regarding the decision process on the special immigration measures for Haiti (prioritizing/speeding up processing of family sponsorship applications, applying moratorium/temporary stay of removals in all cases, issuing temporary residency permits/visas, extension of temporary status for Haitians in Canada).
  - Documents outlining consultations by CIC with the Haitian Community and/or the Haitian Diaspora in Canada prior to the implementation of the special immigration measures, and following their implementation.
  - Documents and correspondence surrounding any possible expansion of the federal family class for Haitians (for sponsorship purposes).

Requesting documents in either French, English or both

**Method of viewing:** Photocopies of original documents

**Name of applicant:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Date of Request:** (Initial: April 7, 2011, Revised: May 26, 2011)

## **Appendix C: ATIP Request #2**

*NB: This ATIP Request was extended for a period of 90 days, beyond the 30-day statutory time limit, for a total of 120 days. The information was not received within the legislated 120 days. In addition, after the 120 day extension had passed, an extension of 180 days was requested for certain pages that needed to be consulted with PCO (for Cabinet confidentiality reasons). These documents were received on December 1<sup>st</sup>, 2011.*

Attention:

This letter is to request information from Citizenship and Immigration Canada under the Access to Information Act.

**Federal Institution:** Citizenship and Immigration Canada

**Description of records requested:**

Requesting the following documents in this date range: Date range: **January 11, 2010 to December 31, 2010.**

- Policy documents, briefing materials (for the Minister and others) regarding the Quebec Special Measures for Haiti.
- Documents and correspondence surrounding the expansion of Quebec's family sponsorship criteria for Haitian applicants following the Haitian earthquake.

Requesting documents in either French, English or both

**Method of viewing:** Photocopies of original documents

**Name of applicant:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Date of Request:** June 15, 2011

Signature of applicant: \_\_\_\_\_ Date: \_\_\_\_\_

## **Appendix D: ATIP Request #3**

*NB: This ATIP Request was extended for a period of 90 days, beyond the 30-day statutory time limit, for a total of 120 days. The information was not received as of March 8<sup>th</sup>, 2012.*

ATIP Request for Canada Border Services Agency  
Submitted: September, 2011

- Most recent data outlining the number of Haitians in Canada currently protected under moratorium/temporary stay of removals (TSR)
- Final briefing notes (no drafts) outlining the moratorium/TSR designation for Haitians.

## **Appendix E: Interview Guide – Members of the Haitian Diaspora**

### **GUIDE D'ENTREVUE – EXEMPLE DE QUESTIONS**

#### **Membres de la diaspora haïtienne**

##### **Générale :**

- 1) Pouvez-vous vous présenter brièvement?
- 2) Quel est votre rôle au sein de la diaspora Haïtienne?
- 3) Vous considérez-vous comme un représentant de la diaspora Haïtienne? Est-ce les membres de la diaspora Haïtienne parlent généralement d'une même voix sur les enjeux en matière de migration?
- 4) Que pensez-vous des mesures spéciales adoptées au Canada?
  - a. Sont-elles satisfaisantes?
  - b. Pensez-vous qu'elles étaient suffisantes étant donné la gravité de ce désastre naturel? Pourquoi ou pourquoi pas?
- 5) Quel type de mesure aurait dû, selon vous, être adoptée?
  - a. Y a-t-il des mesures que les membres de la diaspora Haïtienne ont suggérées au gouvernement et qui n'ont pas été adoptées?
- 6) Quels sont les défis majeurs auxquels ont fait face les Haïtiens au Canada lorsqu'ils essayaient d'utiliser les mesures spéciales en matière d'immigration? Ces défis auraient-ils pu être évités selon vous? Pourquoi et comment?
- 7) Quels sont les défis majeurs que les Haïtiens rencontrent quand ils font une demande d'asile au Canada depuis le séisme? Comment ces défis pourraient être évités?
- 8) Quelles initiatives la \_\_\_\_\_ a-t-elle mise en place pour aider les Haïtiens à naviguer avec les mesures spéciales? Y avait-t-il d'autres organismes de la diaspora qui ont mis en place le même genre de programmes?

##### **Influence de la diaspora haïtienne :**

- 9) Est-ce que les membres de la diaspora haïtienne ont été consultés par le gouvernements fédéral et provincial après le séisme à propos des mesures spéciales en matière d'immigration?

- a. De quelle manière?
  - b. A quelle période?
  - c. Êtes-vous satisfait du résultat de ces consultations? Pourquoi?
- 10) Les membres de la diaspora haïtienne se sont-ils rencontrés pour discuter spécifiquement des mesures spéciales et pour envisager des stratégies visant à engager le gouvernement à ce sujet?
- 11) À votre avis, est-ce que la diaspora haïtienne au Canada a eu une influence sur la mise en œuvre des mesures spéciales en matière d'immigration suite au séisme en Haïti? De quelle manière? Pouvez-vous donner des exemples concrets à ce sujet?
- 12) A votre avis, cette influence a-t-elle été suffisamment importante?
- 13) D'après vous, la diaspora haïtienne est-elle suffisamment bien organisée pour faire valoir son point de vue sur les mesures spéciales mises en place par le gouvernement?
- a. Pourquoi, selon vous?
  - b. Que faudrait-il changer?
  - c. Que faudrait-il renforcer?

**Autre :**

- 14) Quelle est votre opinion concernant la résiliation soudaine en juillet 2010 des mesures spéciales en matière d'immigration envers les Haïtiens mises en œuvre au Québec?
- 14) Connaissez-vous la réaction de la diaspora haïtienne dans les autres provinces canadiennes lorsque les critères d'admissibilité pour le parrainage familial n'ont pas été élargis au niveau fédéral?
- 15) Avez-vous d'autres commentaires à ajouter?
- 16) Y a-t-il un sujet que, selon vous, je devrais considérer davantage?
- 17) Y a-t-il quelqu'un d'autre dans la communauté haïtienne qui a une bonne connaissance de ce sujet avec qui vous pensez que je devrais être en contact?

## **Appendix F : Interview Guide – Public Servants (Quebec)**

### **GUIDE d'ENTREVUE – EXEMPLE DE QUESTIONS**

#### **Fonctionnaires impliqués dans la formation de la politique en matière d'immigration**

##### **Générale :**

- 1) Pouvez-vous vous présenter brièvement?
- 2) Comment votre travail est lié plus spécifiquement au sujet de ma recherche?
- 3) Pouvez-vous décrire et expliquer les mesures spéciales mises en place au Québec à l'égard des Haïtiens suite au séisme de janvier 2010?
- 4) D'après vous, pourquoi des mesures spéciales ont-elles été adoptées au Québec?
- 5) Quels étaient les objectifs principaux de ces mesures spéciales?
- 6) Ces objectifs ont-ils été atteints?
- 7) Est-ce que les mesures spéciales mises en œuvre au Québec étaient « avant-gardistes », ou est-ce qu'elles ont déjà été utilisées par la province pour répondre à d'autres crises humanitaires?
  - a. En quoi différent-elles des autres mesures utilisées précédemment?
  - b. Est-ce que des mesures spéciales ont déjà été mises en œuvre au Québec dans le cas d'Haïti dans le passé?
- 8) Pouvez-vous expliquer pourquoi les mesures spéciales adoptées au Québec ont été retirées le 20 juillet 2010? Quelle a été la réaction de la diaspora Haïtienne quand les mesures spéciales ont été retirées?
- 9) Au moment d'alléger les règles de parrainage familial au Québec, y a-t-il eu y a eu des discussions entre le gouvernement fédéral et le gouvernement du Québec au sujet de l'allègement de ces règles?
- 10) Le Québec a-t-il eu des discussions avec le gouvernement fédéral en lien avec les mesures spéciales? Sur quoi portaient-elles?

##### **Impacts pratiques :**

- 11) Combien d'Haïtiens ont bénéficié du programme spécial de parrainage?

- 12) Combien de demandes avez-vous reçues sous le programme spécial de parrainage au Québec?
- 13) À ce jour, combien de certificats de sélection du Québec ont été émis pour les Haïtiens? Traitez-vous encore des demandes sous le programme spécial de parrainage au Québec?
- 14) Combien de demandes sous le programme spécial de parrainage au Québec ont été refusées? Pouvez-vous donner quelques exemples pour lesquels les demandes sont refusées en général?
- 15) Au niveau fédéral, combien de demandes de résidence permanente ont été traitées et acceptées après avoir obtenues un certificat de sélection du Québec?
- 16) Les CSQs sont-ils encore traités d'une manière prioriser au niveau fédéral?
- 17) À votre connaissance, combien d'Haïtiens ayant bénéficiés du programme spécial au Québec sont arrivés au Canada?
- 18) Quels sont les défis auxquels fait face le MICC dans le traitement des demandes sous le programme spécial de parrainage au Québec?

**Influence de la diaspora haïtienne :**

- 1) Est-ce que les membres de la diaspora haïtienne ont été consultés par le gouvernement du Québec après le séisme à propos des mesures spéciales en matière d'immigration à être adopté?
  - a. De quelle manière?
  - b. À quelle période?
- 2) Comment le gouvernement du Québec a-t-il engagé la diaspora haïtienne durant ce processus?
- 3) À votre avis, est-ce que la diaspora haïtienne au Canada a eu une influence sur la mise en œuvre des mesures spéciales en matière d'immigration au Québec suite au séisme en Haïti?
  - a. De quelle manière?
  - b. Pouvez-vous donner des exemples?

**Autre:**

- 1) Avez-vous d'autres commentaires à ajouter?
- 2) Y a-t-il un sujet que, selon vous, je devrais considérer d'avantage?

## **Appendix G: Interview Guide – Public Servants (Federal)**

### **GUIDE D'ENTREVUE – EXEMPLE DE QUESTIONS**

#### **Fonctionnaires impliqués dans la formation de la politique en matière d'immigration**

##### **Générale :**

- 1) Pouvez-vous vous présenter brièvement?
- 2) Comment votre travail est-il lié plus spécifiquement au sujet de ma recherche?
- 3) Pouvez-vous décrire les mesures spéciales en matière d'immigration qui ont été mises en place suite au séisme en Haïti le 12 janvier 2010?
- 4) Quels étaient les objectifs principaux de ces mesures spéciales?
- 5) Ces objectifs ont-ils été atteints?
- 6) Est-ce que les mesures spéciales mises en œuvre ont déjà été utilisées pour répondre à d'autres crises humanitaires au Canada ?
  - a. En quoi diffèrent-elles des autres mesures utilisées précédemment?
  - b. Est-ce que des mesures spéciales ont déjà été mises en œuvre dans le cas d'Haïti dans le passé?
- 7) Est-ce que les mesures spéciales ont été établies en consultation avec les membres de la diaspora haïtienne? Comment?
- 8) Quelles sont, selon vous, les différences (ou similarités) entre la réponse canadienne en matière d'immigration suite au Tsunami de 2004 et la réponse canadienne suite au séisme en Haïti?

##### **Spécifique au Centre de traitement pilote - Ottawa et le Bureau de traitement d'Ottawa pour Haïti:**

- 9) Pouvez-vous expliquer les objectifs du Bureau de traitement d'Ottawa pour Haïti? Quand a-t-il été créé et pour combien de temps ce bureau va être en opération?
- 10) À votre connaissance, y a-t-il déjà eu un bureau de traitement spécial à CIC pour un autre pays en crise? En quoi est-ce différent dans le cas d'Haïti?

- 11) Quels sont les défis auxquels fait face votre bureau dans le traitement des demandes sous les mesures spéciales en matière d'immigration?
- 12) Comment le processus de traitement expédié est-il différent du processus normal de traitement des demandes?
- 13) Quels sont, en moyenne, les délais de traitement de demandes sous les mesures spéciales en matière d'immigration pour Haïti? Pour les certificats de sélection du Québec?

**Impacts pratiques :**

- 1) À votre connaissance, combien d'Haïtiens sous l'effet d'une mesure spéciale depuis le séisme sont arrivés au Canada?
- 2) Pouvez-vous indiquer le nombre de personnes qui ont été traitées et acceptées dans chaque catégorie des mesures spéciales à ce jour?
- 3) Combien de demandes sous les mesures spéciales en matière d'immigration ont été refusées? Pouvez-vous donner quelques exemples pour lesquels les demandes sont refusées en général?
- 4) Combien de demandes de parrainage familial et de résidence permanente étaient déjà en cours de traitement avant le séisme, comparé à après le séisme?
- 5) En ce qui concerne le parrainage familial – combien d'Haïtiens qui ont fait une demande de parrainage ont eu leurs demandes expédiées?
- 6) À votre connaissance, le gouvernement fédéral a-t-il déjà allégé ses règles de parrainage familial en réponse à une crise humanitaire? Si oui, quand et pourquoi?
- 7) Avez-vous eu des demandes sous la catégorie du regroupement familial des individus hors de la province du Québec qui voulait parrainer leurs frères et sœurs adultes ainsi que leurs enfants adultes?
- 8) Selon une mise à jour de CIC en décembre 2010, 3000 Haïtiens se sont vus accordés l'entrée temporaire au Canada (2,500 ont reçu des visas de résident temporaire et 600 ont reçu des permis de résidence temporaire)
  - a. Selon quels critères ces visas ont-ils été accordés?
  - b. Parmi eux, combien d'Haïtiens ont reçu la résidence permanente?
  - c. Ya t-il des statistiques disponibles plus récentes sur ce point?
- 9) Combien de certificats de sélection du Québec avez-vous reçu et traité à ce jour?

**Autre:**

10) Avez-vous d'autres commentaires à ajouter?

11) Y a-t-il un sujet que, selon vous, je devrais considérer davantage?

## **Appendix H: Interview Guide – Immigration and Refugee Lawyers**

### **SAMPLE INTERVIEW GUIDE Immigration and Refugee Lawyers**

#### **General:**

1. Could you briefly introduce yourself, and explain how your work is related to my research?

#### **Special Immigration Measures:**

1. What is your impression of the special immigration measures adopted in Canada? Are they satisfactory? In your opinion, what status should be given to Haitians in this specific case?
2. What are some of the challenges that your Haitian clients encountered when trying to navigate the special immigration measures?
3. Could you comment on the sudden termination of the Quebec special immigration measures in July 2010? How did this affect your work? Can you tell me what was the reaction from the Haitian community when the measures suddenly ended?

#### **Asylum:**

4. One of the measures implemented by the Immigration and Refugee Board of Canada following the earthquake was to speed up the screening of pending refugee claims in order to expedite interviews. From your perspective, how effective was this initiative?
5. According to CIC, as of May 30 2010, 1,100 refugee claims from Haitians had been processed by the IRB. To your knowledge, has refugee status been granted to Haitian asylum seekers? On which grounds? Do you think the earthquake was an important factor in successful refugee claims? Why and how?
6. To your knowledge, was the “Persons in need of protection” clause of the Immigration and Refugee Protection Act (IRPA) applied to individual Haitian asylum cases? Why or why not? Do you think the earthquake was an important factor in the application of this clause? Why and how?
7. To your knowledge, was the Humanitarian and Compassionate clause of the Immigration and Refugee Protection Act (IRPA) used in response to individual Haitian asylum cases? Why or why not?

8. What are some of the challenges that your Haitian clients have encountered when seeking asylum in Canada since the earthquake?

**Moratorium:**

9. Why was Haiti placed on moratorium in 2004?
10. What is the objective of moratorium status? What are the implications of this status for Haitians currently residing in Canada and Haitians who may come to Canada in the future requesting asylum?
11. Do you think that Canada is likely to lift moratorium status for Haitians in the near future?
12. According to CIC, as of 2006, a number of people protected under a moratorium status eventually did receive refugee status. Could you explain why this is possible?

**Tsunami Comparison:**

13. To the best of your knowledge, could you comment on how the Canadian response following the earthquake differs from the Canadian response following the 2004 Asian Tsunami? How are the responses similar? How are they different?

**Other:**

14. Do you know what was the reaction of the Haitian Diaspora in other provinces than Quebec when family sponsorship criteria were not expanded at the federal level?
15. Do you have any additional comments?
16. Is there an area that you think I should look at further?

## **Appendix I: Outline of Data Requested from CIC**

I am specifically interested in the following statistics within the date range: **Jan 11, 2010 to present**:

- Statistics on how many Haitians have been admitted to Canada to date as a result of the special immigration measures (both federal measures and Quebec's measures).
- Family sponsorship applications from Haitians. Statistics on how many applications have been received since the earthquake, and how many applications have been processed, approved, denied since the earthquake.
- Temporary Residents. Statistics on how many temporary resident visas and permits have been issued for Haitians since the earthquake. Statistics on the number of visa or permit extensions granted for temporary residents.
- Expediting the issuance of permanent resident visas for Haitians. Statistics on how many permanent resident visas have been issued for Haitians since the earthquake.
- Stay of removals for Haiti, or moratorium on removals for Haiti. Statistics on how many Haitians are currently protected under this status.
- Humanitarian and compassionate (H&C) applications. Statistics on the number of permanent resident visas issued for Humanitarian and Compassionate considerations for Haitians. Statistics on the number of H&C applications received from Haitians following the earthquake.
- Refugees. Statistics on the number of refugees from Haiti that received permanent residency following the earthquake.

Quebec special measures:

- Quebec Selection certificates (from Quebec's special humanitarian sponsorship program for Haiti). Statistics on the number of Quebec Selection certificates received at the federal level. Statistics on the number of permanent residency applications received, approved, denied from the Quebec Special Measures Program.

I am also interested in the following statistics from 2009:

- Number of temporary residents in Canada from Haiti in 2009.

## Appendix J: CIC Data Table on Preliminary Admissions of Haiti Special Measures (HSM) Applicants



Preliminary Admissions of Applications Approved For Permanent Resident Application Processed in OHPO/PAP since the Earthquake (January 13, 2010) - In Persons

Cumulative Progress as of March 31, 2011

Admission Date	Haiti Special Measures <sup>1</sup>	Post-HSM <sup>2</sup>	QSM <sup>3</sup>	Other-Non Priority <sup>4</sup>	Total
January 2010	4			32	36
February 2010	12			13	25
March 2010	68			46	114
April 2010	57			41	98
May 2010	105			32	137
June 2010	200			37	237
July 2010	328			53	381
August 2010	199			33	232
September 2010	344	1	9	41	395
October 2010	244	17	40	41	342
November 2010	244	61	117	34	456
December 2010	195	109	221	41	566
January 2011	89	67	115	9	280
February 2011	83	76	131	6	296
March 2011	45	77	138	12	272
<b>Total</b>	<b>2,343</b>	<b>763</b>	<b>1,421</b>	<b>518</b>	<b>5,045</b>

<sup>1</sup>Haiti Special Measures: Haitian Citizen with a Haiti Country of Last Permanent Residence with an FCs, FCH or DR2 application received prior to September 1, 2010

<sup>2</sup>Post HSM: Haitian Citizen with a Haiti Country of Last Permanent Residence with an FCs, FCH or DR2 application received after August 31, 2010

<sup>3</sup>Quebec Special Measures - Humanitarian. MICC category of HQ.

<sup>4</sup>Other-Non Priority: all other categories and Family Class where the applicant doesn't have a Haiti Citizenship and Haiti Country of Last Permanent Residence.

Data source: CAIPS/GCMS as of March 31, 2011

Data source: FOSS as of March 31, 2011

Data compiled by: OPS-STATS

RDIMS #2815289

OHPO/PAP : Ottawa Haiti Processing Office/Port-au-Prince

Please note that operational data may be subject to change. It is intended for internal CIC use only. Permission must be received from Research & Evaluation prior to releasing these numbers into the public domain. Please contact the Data Protocol Unit at NHQ-DPU@cic.gc.ca for authorization to release this data for external use.

Veillez noter que les données opérationnelles sont appelées à changer. Elles sont réservées à l'usage exclusif de CIC. Il faut obtenir l'autorisation de la Direction générale de la recherche et de l'évaluation avant que ces chiffres puissent être rendus publics. Veuillez contacter l'Unité du protocole des données à l'adresse NHQ-DPU@cic.gc.ca pour obtenir l'autorisation de divulguer ces données à l'externe.

1 of 1

Source: Citizenship and Immigration Canada (CIC). (2011). Data Table: Preliminary Admissions of Applications Approved for Permanent Resident Application Processed in OHPO/PAP since the Earthquake (In Persons). *Data Retrieved from a CIC Statistics Request (copy on file with author).*

## Appendix K: CIC Data Table on Protected Persons and H&C Applicants

Permanent Residence Applications Authorization\* to Haitian Citizens - In Persons

	Protected Persons in Canada	Humanitarian and compassionate***
January 2010	90	12
February 2010	64	5
March 2010	117	10
April 2010	103	7
May 2010	188	7
June 2010	113	11
July 2010	149	24
August 2010	106	16
September 2010	76	16
October 2010	111	19
November 2010	135	23
December 2010	58	1
January 2011	94	19
February 2011	107	21
March 2011	165	16
<b>Total</b>	<b>1,676</b>	<b>206</b>

Permanent Residence Applications Received In-Canada\*\* to Haitian Citizens - In Persons

	Protected Persons in Canada	Humanitarian and compassionate***
January 2010	134	57
February 2010	219	90
March 2010	299	109
April 2010	283	78
May 2010	253	98
June 2010	281	117
July 2010	334	130
August 2010	312	107
September 2010	233	82
October 2010	252	80
November 2010	312	70
December 2010	230	66
January 2011	175	60
February 2011	229	10
March 2011	176	2
<b>Total</b>	<b>3,722</b>	<b>1,156</b>

Permanent Residence Visas to Haitian Citizens - In Persons

	HCI-Humanitarian and compassionate case
January 2010	0
February 2010	0
March 2010	0
April 2010	0
May 2010	1
June 2010	1
July 2010	3
August 2010	0
September 2010	0
October 2010	1
November 2010	0
December 2010	1
January 2011	0
February 2011	0
March 2011	0
<b>Total</b>	<b>7</b>

Authorizations: Cases approved in Canada

\*\*There is a lag between application received and application created in the system. Recent data may be under reported.

\*\*\*Included only HCI-Humanitarian and compassionate case & HC2-Sponsored H&C Appl. Outside Family Class and does not include FCH-Family relations - H&C

Data source: imm\_calps\_e as of Jul 18, 2011

Data source: afl\_e as of July 18, 2011

Source: Citizenship and Immigration Canada (CIC). (2011). Data Table: Permanent Residence Applications Authorization to Haitian Citizens (In persons); Data Table: Permanent Residence Visas to Haitian Citizens (In Persons); Data Table: Permanent Residence Visas to Haitian Citizens (In Persons). *Data Retrieved from a CIC Statistics Request (copy on file with author).*

# Appendix L: CIC ATIP Document “Allowing Non-Family Members to Co-sign Family Class Sponsorship for Victims of the Earthquake in Haiti”

Document Released Under the Access to Information Act / Document divulgué en vertu de la Loi sur l'accès à l'information

F-000000

Classification (if applicable)

MEMORANDUM TO THE MINISTER

## ALLOWING NON-FAMILY MEMBERS TO CO-SIGN FAMILY CLASS SPONSORSHIPS FOR VICTIMS OF THE EARTHQUAKE IN HAITI

FOR DECISION

### SUMMARY

- The department has been asked to consider whether, as a response to the situation in Haiti, CIC should allow people in provinces outside of Quebec to supplement the financial criteria for family class sponsorship.
- Quebec regulatory amendments, which will be in effect between February 17 and December 31 of this year, will allow Quebec residents to meet the financial criteria for family class sponsorship through co-signature of the undertaking by any other Quebec resident. Normally only the sponsor's spouse or common-law partner is allowed to co-sign an undertaking. Co-signature of undertakings under the *Immigration and Refugee Protection Regulations* is also restricted to the spouse and common-law partner.
- It is not clear to what extent current financial criteria for family class sponsorship will operate as a barrier to Canadian citizens and permanent residents who wish to sponsor their family members for immigration. It is not necessary to meet minimum necessary income levels to sponsor a spouse, common-law partner or dependent child. In addition, section 25 of the *Immigration and Refugee Protection Act* already provides authority for applicants in Haiti being sponsored by individuals outside of Quebec to seek a waiver of sponsorship criteria on the basis of humanitarian and compassionate consideration.
- It is recommended that no federal measure beyond existing authorities be introduced. The majority of Haitians reside in Quebec and will be able to take advantage of that province's special measure. No other province has authorities equivalent to those of Quebec. Co-sponsorship arrangements have not been successful historically and may be difficult to enforce, particularly in light of current litigation.

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-2-

- The implementation of any further special measures would only add to current operational pressures with regard to priority processing for family class sponsorship.
- Expanding the ability to co-sign beyond spouses and common-law partners through a public policy would create an unnecessary precedent and could only be done following consultation with provinces and territories.
- Communications can focus on what the government is currently doing to respond to the crisis in Haiti and point to the availability of H&C for exceptional cases, while underscoring the responsibilities inherent in sponsorship undertakings.

**BACKGROUND:**

- In response to the crisis in Haiti, the Province of Quebec has introduced new regulations to permit family class sponsors who do not meet the financial requirements to enter into a joint sponsorship with any Québec resident of at least 18 years of age. Applications under these new provisions are restricted to those who are sponsoring Haitian nationals who were seriously and personally affected by the earthquake in Haiti. Applications must be made by December 31, 2010. The “co-signers” will be jointly responsible for the sponsorship undertaking for its duration.
- Under the *Immigration and Refugee Protection Regulations (IRPR)* only the sponsor’s spouse or common-law partner may co-sign a sponsorship undertaking. The co-signer is jointly liable for any breach of the undertaking. Use of a co-signer may enable a sponsor to meet the financial criteria for family class sponsorship, as their income is taken into account to determine if minimum necessary income requirements have been met. Minimum necessary income is defined as the low income cut-off, an amount that varies according to family size. For sponsorship of a spouse, common-law partner or dependent child, it is not necessary to meet minimum necessary income. In these cases, the immigration officer only needs to be satisfied that the sponsor can provide for the basic needs of their spouse, common-law partner or dependent child without reliance on social assistance.
- In addition to meeting financial criteria, both the sponsor and the spouse or common-law partner who co-signs the undertaking must meet basic sponsorship requirements (e.g. be a Canadian citizen or permanent resident, 18 years of age or older, residing in Canada, not subject to removal, no criminal conviction for sexual offence or offence resulting in bodily harm, not in default on a previous undertaking, not in receipt of social assistance).
- The department was asked to consider whether, in light of Quebec’s regulatory changes, consideration should be given to “supplementing the financial criteria for family class sponsorship.” In other words, should measures for family class sponsorship similar to those introduced in Quebec be made available elsewhere in Canada.

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**CONSIDERATIONS:**

- Currently, under section 25 of the *Immigration and Refugee Protection Act (IRPA)* sponsors who do not meet the sponsorship requirements may request H&C consideration in order to overcome the requirement to meet the financial thresholds [*can we get numbers on how often we grant this exemption?*]. With the introduction of Quebec's measures, family class applicants from Haiti may seek H&C consideration to waive sponsorship criteria. The real issue is to what extent the government wants to actively encourage use of this measure.
- It is not clear how many Haitian Canadians or permanent residents would not meet the regular financial requirements for family class sponsorship; nor is it clear how many would seek co-sponsorship arrangements that went beyond their spouse or common-law partner.
- At the time of the 2006 census the vast majority of Haitian immigrants in Canada lived in Quebec (56,755). Approximately 6,600 Haitian immigrants lived in other parts of Canada, including 3,730 Haitians-born Canadians who lived in Ottawa. It is reasonable to assume therefore, that the greatest demand for family class sponsorship will be in Quebec; and the contrast between the federal and Quebec schemes will probably be most evident in the Ottawa area.
- Over the longer term there are risks that extension of co-sponsorship criteria would result in inadequate financial and integration support for those who are granted permanent residence. There is some evidence to suggest that sponsorships entered into with a third party have a higher rate of default. Under the previous *Immigration Act*, an administrative policy existed that allowed co-sponsorships by siblings. Administrative co-sponsorship meant that two or more sponsors, neither of whom could meet the financial test for sponsorship alone, were allowed to pool their resources provided they were each eligible to sponsor the same family member. The procedure was adopted in 1986 as a result of a recommendation by the Standing Committee on Immigration. This policy was abandoned in 1997, however, in part because of evidence that these administrative co-sponsorships resulted in a higher default rate, compared to the default rate for individual sponsorships.
- If H&C is used to facilitate co-signature by any Canadian citizen or permanent resident, enforcement of the sponsorship undertaking and recovery of any social assistance paid to sponsored individuals may be challenging. This will be of particular concern if the Supreme Court of Canada does not give leave to appeal in the Mavi case, or decides against the government of Ontario and Canada in that case. In the Mavi case the Ontario Court of Appeal has held that governments must exercise discretion in the enforcement of sponsorship undertakings and give case by case consideration in cases where they are seeking repayment of social assistance paid to sponsored individuals.

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- From an operational perspective, processing family class applications for Haitians is already very challenging. Under the current circumstances it is very difficult to establish identity and the family relationship between the sponsor and the principal applicant. The departments operational capacity is already stretched to the limit to meet current federal commitments for priority processing of family class sponsorships. Consideration of requests to waive financial criteria for sponsorship will add another layer of operational complexity to the processing of cases from Haiti.
- The Minister also has the authority under section 25 of IRPA to create a public policy that would permit non-family members to co-sign a family class sponsorship. While this might be operationally simpler, the same concerns about sponsorship breakdown and enforcement remain. This has also never been done in the past, and would set a precedent for future immigration responses to individuals affected by natural disasters. As well, given provincial responsibility for social assistance and the role of provinces in sponsorship enforcement, a public policy allowing additional persons to co-sign family class sponsorships in jurisdictions outside Québec could not be introduced without consultations with affected provinces and territories.

s.23

**RESOURCE IMPLICATION(S):**

- Quebec's measures, combined with requests for H&C consideration from applicants being sponsored by Canadian citizens or permanent residents outside of Quebec will place further demands on CIC operations.

**COMMUNICATION IMPLICATION(S):**

- CIC communications should continue to underscore that the Government of Canada's principle priority is to provide assistance with reconstruction in Haiti, as well as providing care and shelter to Haitians in their country. Immigration is just one part of the Government of Canada's overall approach to Haiti.
- Within the context of immigration, the federal government is committed to priority processing for applications from individuals with family in Haiti, and allowing Haitians in Canada temporarily to extend their stay.

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- Public messaging should focus on Québec's rights under the *Canada-Québec Accord*, their ability to determine their immigration levels and their responsibilities with respect to integration. Other provinces do not have similar authorities with respect to the selection of immigrants.
- For those outside of Quebec, communications may point to the availability of H&C. However, clear emphasis should be placed on use of H&C for exceptional cases. As has already been announced for in-Canada H&C applicants, where a client has identified a hardship due to the earthquake, this will be an additional factor for consideration. The seriousness of sponsorship undertakings, involving a commitment to provide for the basic needs of those granted permanent residence for three to 10 years, should also be underscored.

**RECOMMENDATION(S):**

- It is recommended that existing authorities for case by case H&C consideration be used to respond to any demands for a softening of sponsorship criteria outside of Quebec.

Neil Yeates

I concur

---

The Hon. Jason Kenney, PC, MP

# Appendix M: CIC ATIP Document - Draft Backgrounder

Document released under the Access to Information Act / Document divulgué en vertu de la Loi sur l'accès à l'information

DRAFT - SECRET

## Background

The earthquake in Haiti on January 12<sup>th</sup>, 2010 devastated the country's capital Port-au-Prince. In response to the crisis, Citizenship and Immigration Canada (CIC) implemented special measures allowing for the early admission of those who self-identified as being directly and significantly affected by the events in Haiti. The measures allow for the priority processing of new and existing family class sponsorships, spouse or common-law partner in-Canada class, protected persons with family in Haiti, citizenship and citizenship certificates, and in-Canada work permit applications and temporary resident status extensions.

There is no immediate threat of removals for Haitians in Canada. Haiti has been under a temporary suspension of removal (TSR) since 2004. A TSR is applied to a country by the Minister of Public Safety when there is a temporary and generalized risk to the entire population. Individuals who are criminals, pose a security threat, have committed war crimes or crimes against humanity or who choose to return to their country voluntarily, do not benefit from a TSR.

## Haitians in Canada

There is a significant Haitian community in Canada. At the time of the 2006 Census, there were 63,350 Canadian citizens or permanent residents living in Canada, who were born in Haiti. Canada accepts between 1,500-2,500 permanent residents from Haiti each year. As a result, in 2009, the number of Canadian citizens or permanent residents in Canada is likely approximately 70,000 individuals.

In 2007, there was an influx of Haitian nationals claiming refugee status at the Canada-US land border. At the time, individuals from countries under a TSR were exempted under the *Safe Third Country Agreement* and could enter Canada from the United States. The influx of Haitian nationals was due to misinformation given to this community regarding a special program in Canada. In 2009, changes to the *Immigration and Refugee Protection Regulations* removed the exemption to TSR nationals under the *Agreement*. The number of refugee claimants from Haiti with claims currently in process at the IRB is close to 8,000. There are about 1,500 Haitians who are failed refugee claimants and in Canada due to the TSR.

Comment [51]: Info TBC

Based on CIC data, the number of Haitian foreign students in Canada at present is about 400-500, while the number of temporary foreign workers is approximately 100. Canada issues between 4,000-5,000 visitor visas to Haitians each year. It is not possible to estimate how many of these visitors would be in Canada at any point in time.

Comment [52]: Can we get accurate numbers? May see many of these before the IRB eventually.

The Department has been asked to explore the possibility of regularizing the status of Haitian nationals in Canada. Based on the numbers above, here are approximately 15,100 Haitians in Canada without permanent residence. The numbers have been summarized in the table below.

000771

DRAFT - SECRET

Estimated Haitian Population in Canada (Temporary Residents)	
Refugee Claimants	8,000
TSR	1,500
Students	500
TFW	100
Visitors	5,000
<b>TOTAL</b>	<b>15,100</b>

There are two ways in which this population (or part of the population) could be regularized. Affected individuals could apply for humanitarian and compassionate (H&C) consideration or the Department could develop a public policy for affected individuals.

#### Humanitarian and Compassionate (H&C) Consideration

Section 25(1) of IRPA gives CIC the authority to grant permanent resident status or exempt an applicant from any applicable requirements of IRPA when this is justified by H&C considerations. H&C is a discretionary provision applied on a case-by-case basis by the Minister or Minister's delegate. H&C decisions have no eligibility criteria per se, though there are guidelines for decision makers to follow.

The H&C provision can be used currently for Haitians in Canada and applications could be expedited. It has already been recommended to the Minister that applications submitted in Canada prior to the earthquake in Haiti (January 12th, 2010) receive expedited processing. This is an operationally manageable solution as this only involves 87 cases. Alternatively, H&C could be used with specific guidelines pertaining to these cases, as was done with the Vietnamese in the Philippines. These guidelines could outline considerations specifically relevant to Haitians.

Comment [53]: Viet Phi guidelines

There are several concerns with both of these options. For example, the Government may face pressure to introduce similar measures for other TSR countries (Afghanistan, Zimbabwe and Iraq). TSR nationals in Canada currently have access to H&C, however, applications are not expedited and there are no specific guidelines for officers. As such, there is a strong likelihood of legal challenges from these groups alleging unequal treatment.

The operational impact of either H&C option is significant. There are approximately 8,000 Haitian nationals either before the IRB. Based on IRB acceptance rates, it is estimated that X Haitians would be eligible to apply for H&C consideration. As well, those before the IRB may apply for H&C consideration immediately in order to increase their chances of remaining in Canada. Either scenario will result in an enormous impact the H&C inventory and processing times. In addition, as H&C applicants cannot include family members in Haiti on their applications further processing of sponsorship applications would be required creating a backlog in this category as well.

Comment [54]: I think this point needs to be moved to "Target Population"

000772

DRAFT - SECRET

In addition, due to the discretionary nature of H&C, decision making is complicated and time-consuming. As H&C officers follow guidelines rather than strict criteria, there is a greater risk of inconsistent decision making. Also, given that many Haitians have not been in Canada for a significant period of time, acceptance rates may be low.

Both proposals for H&C measures are also precedent-setting. While guidelines were given to applicants and officers for the Vietnamese in the Philippines, this approach has never been used for an in-Canada group. In addition, both approaches would set a precedent for future emergency situations. Finally, the Government would be prioritizing a group who may have no direct ties to Canada and no status in Canada, this has not been done previously.

Public Policy

Section 25(1) of IRPA may be used to create a public policy to facilitate permanent residence for a group of individuals with similar circumstances who do not comply with the criteria of one of the existing immigration classes. Public policies established by the Minister set out specific eligibility criteria for permanent resident status. Only those applicants who meet these criteria may be granted permanent residence under the policy, thus the discretion of the immigration officer is limited. As there is less discretion, public policies often result in more consistent decision making.

Similar to the concerns with H&C, the use of a public policy would likely result in pressure to introduce similar measures for other TSR nationals. As the public policy would not be available to all TSR nationals, the likelihood of a legal challenge with this option is greater than with H&C measures.

Due to the number of Haitians currently in Canada without permanent residence, this option has similar operational concerns as H&C measures. Given the expected number of applications, resources for processing would have to be re-directed from other immigration classes.


Similar to H&C measures, a public policy would set a precedent for future emergency situations. Finally, the Government would be creating a special measure for a group who may have no direct ties to Canada and no status in Canada, this has not been done previously. The use of a public policy also stretches the authority of A25 which is not intended to be used for creation of separate immigration class.

Target Population

In addition to considering measures for Haitian nationals in Canada, it is also important to consider the target population for the measures. There are presently approximately 15,100 Haitian nationals in Canada. Extending measures to all temporary residents in Canada affected by the earthquake may be difficult as many of these people entered Canada with the understanding they would leave at the end of their authorized stay. As per section 179 of IRPA, temporary residents, such as visitors, students and workers must demonstrate that they will

Comment [55]: Confirm

# Appendix N: CIC ATIP Document “Haiti Exit Strategy”

 Citizenship and Immigration Canada / Citoyenneté et Immigration Canada  
Deputy Minister / Sous-ministre  
Ottawa, Canada / K1A 1L1

Document Released Under the Access to Information Act / Document divulgué en vertu de la Loi sur l'accès à l'information

**AUG 23 2010**

F-4769

## MEMORANDUM TO THE MINISTER

### HAITI EXIT STRATEGY

#### FOR DECISION

#### SUMMARY

- In response to the January 12, 2010, Haiti earthquake, Citizenship and Immigration Canada (CIC) implemented special priority processing measures for individuals who self-identified as being directly and significantly affected by the earthquake. Although no specific timeline was developed for the existence of the Haiti Special Measures (HSM), CIC's objective has always been to return to standard procedures as soon as reasonably practicable.
- Despite the significant resources that CIC has devoted to processing HSM cases within very narrow timelines, a lack of client compliance in meeting all requirements is preventing CIC from making decisions on applications. As well, applications from Haitian nationals have been increasing since April 2010, and CIC recognizes that, as a result of this increase and the lack of client compliance, the Ottawa Haiti Processing Office (OHPO) and the Canadian visa office in Port-au-Prince will be unable to maintain the 12-week processing commitment that was previously established.

s.21(1)(a)  
s.21(1)(b)

Canada

000753

#### **BACKGROUND:**

- Following the earthquake, CIC has been very successful in meeting its processing commitments. As of July 31, 2010, CIC has issued 1,576 permanent resident visas, 1,612 temporary resident visas and 503 temporary resident permits, including permits for 203 adopted children who came to Canada under Operation Stork. Notwithstanding CIC's success in processing cases, there remain a large number of applications that have been refused or withdrawn for lack of client compliance (longer processing times give clients more time to comply). Since the earthquake, more than 1,200 permanent resident applications have been refused and over 600 withdrawn.
- CIC has a significant number of applications to process, both from categories that were covered under the HSM and those that were outside the HSM. The current overseas inventory is approximately 4,100 applications, with 1,556 falling under HSM and the remaining 2,558 falling under non-priority categories. Applications from parents and grandparents continue to increase, and CIC is anticipating a large volume of applications will be received under the Quebec Special Measures (QSM) parrainage humanitaire program. As well, CIC has a large volume of skilled worker applications that were received prior to the earthquake that have not yet been processed.
- Some applicants are not completing immigration medical exams or DNA testing in an expeditious manner; they are failing to submit the proper fees; or they are not attending scheduled interviews. As a result, CIC has started to withdraw these applications after dutifully making repeated requests to the clients.
- To process Haitian cases under the HSM 12-week timeline, CIC established the OHPO and a visa office in Santo Domingo, while also increasing the number of staff at the Canadian Embassy in Port-au-Prince. This increase in resources was a result of an increase in funding. This funding is scheduled to end on March 31, 2011.

#### **CONSIDERATIONS:**

- The implementation of the Global Case Management System (GCMS) will require training and time for employees to become familiar with GCMS. The GCMS roll out date for OHPO and Port-au-Prince is scheduled for October 6, 2010. All processing offices that are covered by the Port of Spain medical hub must be converted to GCMS at the same time, and therefore this roll out cannot be delayed.
- The Department may draw criticism for parking cases, specifically in categories where CIC may not take any action before January 12, 2011 (the earthquake anniversary date). Individual applicants, non-governmental organizations, interest groups and the media may be critical of CIC not having taken action on some categories of applications a full year after the earthquake.

- The option may be available to process some Haitian cases that are currently on hold in other visa offices, such as Santo Domingo and Mexico City. Available resources, number of applications and logistics will determine the feasibility of this process.
- Following your announcement that CIC will end the HSM, CIC will process applications based on the levels of priority outlined below.

**s.21(1)(a)**

**s.21(1)(b)**

000755

s.21(1)(a)  
s.21(1)(b)

**RESOURCE IMPLICATIONS:**

- OHPO and Port-au-Prince will be in a better position to process applications with existing resources without having to meet the 12-week processing commitment for new applications.
- Funding for incremental resources at OHPO, Port-au-Prince and Santo Domingo ends on March 31, 2011. Barring further funding, CIC will revert back to normal processing with all lines of business resumed. Although efficiencies in case processing have been realized, it is unknown to what extent they can be maintained due to intake.

**COMMUNICATION IMPLICATIONS:**

- Communications will prepare an announcement outlining CIC's exit strategy. This information will be released on the date chosen to end the HSM.
- A web update and a Q&A package will also be developed.

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**s.21(1)(a)**  
**s.21(1)(b)**

*This information was removed at the request of the Faculty of Graduate and Postdoctoral Studies (FGPS), University of Ottawa, according to the Privacy Act.*

Attachment: Temporary Public Policy Document

000757

**TEMPORARY PUBLIC POLICY CONCERNING FEES FOR RESPONDING TO THE  
HAITIAN EARTHQUAKE AND RESULTING HUMANITARIAN CRISIS**

**Public Policy**

I rescind all fee exemptions that were implemented on January 22, 2010 for Haitian nationals who were directly and significantly affected by the earthquake in Haiti.

*This information was removed at the request of the  
Faculty of Graduate and Postdoctoral Studies  
(FGPS), University of Ottawa, according to the  
Privacy Act.*

Dated at Ottawa, this      day of August 2010

000758

## Appendix O: CIC ATIP Document “Overview of Special Measures Taken in Natural Disasters”

Document Released Under the Access to Information Act / Document divulgué en vertu de la Loi sur l'accès à l'information.

### OVERVIEW OF SPECIAL MEASURES TAKEN IN NATURAL DISASTERS

**Issue:** To provide an overview of Canada’s immigration response to natural disasters.

#### **Key Messages**

- Canada is proud to have played an active role in the humanitarian assistance to victims of natural disasters.
- Canada has responded to various disasters by providing special immigration measures to facilitate family reunification of persons directly impacted by disasters such as the 2004/05 Tsunami; the 2004 hurricane in the Caribbean and the 2005 Pakistan earthquake.

#### **Background:**

- Canada's strategy to help persons impacted by these natural disasters has traditionally been organized around humanitarian assistance including emergency aid. Citizenship and Immigration Canada’s strategy has been the policy pillars of facilitating family reunification and extending temporary resident visas for persons personally and seriously impacted by the disaster.
- Under extremely exceptional circumstances only, such as the emergency situations of the 2004 Asian Tsunami and the Earthquake in South Asia, and the 2006 Lebanon Crisis, CIC responded by adopting the special measures of expedited processing and waiving the relevant processing fees, both for temporary and permanent residence, including the Right of Permanent Residence fee (RPRF), where it had not yet been paid.
- Additionally, for the Tsunami and Pakistan earthquake, the Department also reviewed priority cases in the existing inventories in Canada and sympathetically considered requests for extensions of status from visitors, students or temporary workers who originated from the affected areas or were seriously and personally affected by the disaster.
- When considering a response, CIC’s first priority is normally family class applications for spouses, common-law partners, conjugal partners, dependent children, and orphaned siblings, nieces or nephews and grand children who have been personally and seriously affected by the disaster. Second priority has been parents and grandparents. CIC has also considered other applicants with close family ties in Canada on humanitarian and compassionate grounds. For the Pakistan earthquake victims, the Department also processed, on a priority basis, new family class applications from those who had been seriously and personally affected by the disaster and who had a close family connection to Canada.
- In Canada, foreign students who were seriously and personally affected by the disaster were given priority processing for work permits. Similarly, officials looked sympathetically at requests for extensions of status from persons who were visitors, students or temporary workers and who originated from the affected areas and were seriously and personally affected by the disaster.

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#### **Canada's Response to Specific Disasters:**

- Attached as Annex A is a list of all instances where section 25 of the IRPA has been used to exempt certain criteria since 2002 and where other special measures were used to facilitate immigration in the 1990's. Annex B lists specific natural disasters since 2004 in which Canada implemented measures to complement broader Government of Canada humanitarian assistance.

#### **Considerations:**

- Challenges for CIC in the past have been in handling the large volumes of inquiries, and pressures of screening potential new cases. Based on the Asian Tsunami crisis alone, widespread rumours that Canada was offering "open-visas" or "free-visas" led to hundreds of people gathering at the local CIC visa section every day, most of whom had neither family ties to Canada, nor were personally affected by the natural disaster. In the case of the Pakistan Earthquake, the fee waiver led to the submission of over 10,000 applications, the vast majority of which were not directly affected by the disaster or had no connection to Canada. These unintended consequences made it difficult to identify and prioritize the treatment of those genuinely affected by the Tsunami quickly.
- Special event codes in CAIPS were only introduced in 2007 and so CIC is not able to collect data on people admitted under special measures following natural disasters.
- The Department does know that from December 27, 2004 to June 7, 2005 CIC issued 366 permanent resident visas and granted permanent residence to 278 people in an effort to help reunite close family members of Canadian citizens and permanent residents who were seriously and personally affected by the tsunami disaster in December 2004. The large majority of the visas were issued to priority family class members: spouses, partners and dependent children. Close to 80 per cent of priority family class applications already in process when the disaster struck were finalized in the four months following the tsunami.
- In general, special measures are not necessary for dealing with natural disasters. CIC already has the appropriate legislative and regulatory authority to deal with exceptional circumstances, such as processing applications on Humanitarian and Compassionate grounds and is well-equipped within existing operations to process priority cases. Settlement programming is available to any permanent resident admitted to Canada; Annex C provides a breakdown of settlement funding to provinces and territories.

*This information was removed at the request of the Faculty of Graduate and Postdoctoral Studies (FGPS), University of Ottawa, according to the Privacy Act.*

January 20, 2010

Attachments:  
Annex A – Use of Public Policy  
Annex B – Natural Disasters  
Annex C – Funding for Settlement Services to Provinces

000016

## **Annex A – Use of Public Policies**

### **Public policies under IRPA in response to sudden crisis situations**

- Providing fee exemptions for foreign nationals seriously and personally affected by the tsunami in Asia and earthquake in Pakistan (2004/2005)
- Fee waiver for dependents of Canadian citizens evacuated from Lebanon (exemption of requirement to provide evidence of payment with an application). (July 18, 2006) as well as waiving of fees for single entry temporary resident visas, temporary resident permits, authorizations to return to Canada, certifications and replacements of immigration documents, and travel documents, received at the following Canadian missions: Beirut, Lebanon; Amman, Jordan; and Damascus, Syria, or at identified transit points.
- Exempting permanent residents directly affected by the situation in the Gaza Strip from payment, as well as from providing proof of payment, of a permanent resident travel document (effective Dec. 31, 2008)

### **Other public policies under IRPA not related to sudden crisis:**

- Special immigration measures for local staff in Kandahar who support Canada's mission in Kandahar Province, Afghanistan. (September 2009 – 2011).
  - Waiving of application fee (exemption of requirement to provide evidence of payment with an application, and right of permanent residence fees (under Financial Administration Act, – not waived under A25)
  - Interim Federal Health coverage, which is federally funded health care offered to refugee claimants
  - Resettlement services (Resettlement Assistance Program) in the form of 12 months of income support and immediate and essential services, which may include clothing, temporary accommodation, and orientation services upon arrival in Canada.
- Temporary Public Policy concerning foreign crew members aboard RCMP and Canadian Forces accommodation vessels during the Vancouver 2010 Olympic Games (pending approval)
- Extending initial fee-exempt temporary resident permits (TRP) for victims of trafficking from 120 days to 180 days, and allowing fee-exempt open work permits. (June 2007 - still in effect)
- Allowing applicants in the Spouse or Common-law Partner in Canada Class to add, during processing, declared family members to their application for permanent residence (2006 - still in effect pending regulatory amendment)
- Providing fee exemptions for victims of human trafficking (2006 – updated in 2007)

000017

- Facilitating the immigration to Canada of certain members of the Vietnamese community in the Philippines without permanent residence who have close family members in Canada (2005)
- Facilitating the processing of in-Canada cases for spouses and common-law partners without status (2005 - still in effect pending regulatory amendment)
- Facilitating the reintegration into Canadian society of people who ceased to be citizens as minors as a result of actions taken by their responsible parents (2003) (an amendment to the Citizenship Act in May 2005 addressed this issue)
- Facilitative measures for Algerian foreign nationals affected by the lifting of the temporary suspension of removals (2002)
- Group processing of refugees: Public policies have been used by CIC to waive the requirement to assess each persons' refugee story individually, thereby facilitating group processing of the following groups of Convention refugees.
  - 900 Christian Sudanese and Muslim Somali Madhiban from Kenya in 2003/2004
  - 450 Somali Madhiban from Kenya in 2004/2005
  - 3,900 Karen refugees from Thailand between 2006 and 2009
  - 5000 Bhutanese refugees from Nepal between 2008 and 2012.

#### **Pre-IRPA Facilitation Measures**

- MOU with Canorient Association allowing sponsorship of 200 immigrants from Pakistan under the independent immigrant category (1996)
- Public policy permitting foreign born same-sex partners of Canadians or permanent residents to apply as independent immigrants with H&C consideration based on the relationship (1994).
- In-Canada special measures for citizens of the former Yugoslavia provided relaxed selection criteria for those who were in Canada when hostilities began in 1992 and who were unable to return home (1992)
- Canadian special measures for Chinese foreign nationals following the crisis events in Tiananmen Square. Measures included visa extensions, deferral of removals, accelerated processing of applications for family reunion from China (1989); and the related measure, Dependents in China of Special Measures Applicants in Canada (1991)

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## **Annex B – Natural Disasters**

### **Hurricane Ivan 2004**

CIC offered priority to the processing of applications of spouses, common-law and conjugal partners and dependent children of Canadian citizens and permanent residents. The Department also exercised flexibility in allowing people from Grenada and Jamaica to extend their stay in Canada; this included students and temporary workers.

New applications for family class sponsorships of persons affected by the hurricane were also given priority processing.

### **Tsunami 2005**

Applications already in process overseas and at any of the Case Processing Centres in Canada as well as applications at inland CICs were expedited. All offices were instructed to review their caseloads to identify all existing applications in relation to the affected areas and to expedite those applications by attempting to contact the applicants to finalize the applications on a highest priority basis. Applications for parents and grandparents were screened and those identified as being affected were contacted to ensure that the addresses were accurate.

Temporary Resident Permits were allowed to admit persons immediately on humanitarian and compassionate grounds where the applicant was at direct and immediate physical risk and no obvious security risks were present.

Initial estimates were that a maximum of 7,806 persons' applications (inland and overseas) would be impacted. By July of that year however, less than 400 permanent resident visas needed to be issued.

Members of Parliament and Senators were provided with a special information package and cases identified by MPs to the Case Processing Centres were processed on a priority basis.

A special toll free telephone line was created to respond to questions on immigration measures.

### **Pakistan Earthquake 2005**

At the time of the earthquake, CIC offices abroad had less than 200 cases (number of persons unknown) from applicants in the affected areas. Steps taken include those listed above for the Tsunami. In addition, a special FAX line for Members of Parliament and Senators was put in place so that they could forward case specific queries received from their constituents.

**Annex C – Settlement Costs by Province**

NOTES:

1. Quebec's figures include spending per immigrant *beyond* settlement funding. It is a grant that covers costs for Selection, Administration, Refugees, as well as for Settlement, and is not directly comparable to spending per immigrant in other provinces (which is only for settlement). The figure is based on the average intake over the years 2006,2007,2008 (45 033) and \$253.7M from the RPP, giving \$5 633 per immigrant.
2. The funding allocation for provinces outside of Ontario and Quebec are determined on a three-year rolling average of intake, capacity-building amount, and is weighted for refugees.
3. Funding allocations for Ontario and Quebec are determined pursuant to agreements : the Canada-Ontario Immigration Agreement and the Canada-Quebec Accord.

**s.14(a)**  
**s.21(1)(a)**  
**s.21(1)(b)**

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**Page(s) 000021 to 000021**


**Is(Are) exempted pursuant to section(s)  
est(sont) exemptée(s) en vertu de(s)(l')article(s)**

**14(a), 21(1)(a), 21(1)(b)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

# **Appendix P: CIC ATIP Document “Fee Exemptions and Related Provisions for Responding to the Humanitarian Crisis in Haiti”**

Document Released Under the Access to Information Act / Document divulgué en vertu de la Loi sur l'accès à l'information.

 Citizenship and Immigration Canada / Citoyenneté et Immigration Canada  
Deputy Minister / Sous-ministre  
Ottawa, Canada  
K1A 1L1

JAN 21 2010

SECRET

F-3769

## MEMORANDUM TO THE MINISTER

### **FEE EXEMPTIONS AND RELATED PROVISIONS FOR RESPONDING TO THE HUMANITARIAN CRISIS IN HAITI**

#### FOR APPROVAL

##### SUMMARY

- In order to facilitate relief efforts for the humanitarian crisis in Haiti, it is recommended that a Public Policy be issued pursuant to your authority under Section 25 of the Immigration and Refugee Protection Act to waive fees and other requirements as described in the attached Temporary Public Policy.
- In brief, this policy will waive fees in situations where foreign nationals (overseas or in Canada temporarily) who are directly affected by the humanitarian crisis in Haiti are applying for new or extended immigration status. In the case of work permits, the need for a labour market opinion is also waived. Permanent Residents directly affected by the aforementioned situation and who have lost their Permanent Resident Card will be provided Permanent Resident travel documents and be able to have the card replaced in Canada without fee. Additionally, in the case of foreign nationals who are directly affected by the humanitarian crisis in Haiti and are seeking to travel to Canada to become a permanent resident, they are exempt from the requirement to present a prescribed travel document.
- This policy will remain in effect until it is revoked or altered. The policy will be reviewed regularly as part of Canada's role in global Haiti relief efforts.

#### BACKGROUND:

- The earthquake of January 12, 2010 affected 3 million people, killing tens of thousands and destroying 70% of the buildings in Port au Prince. Before the earthquake, Haiti was already the poorest country in the Western Hemisphere with 80% of its population living below the poverty line. Canada has strong ties to Haiti, with approximately 150,000 Canadians being of Haitian descent, many in the Montreal area.

Canada

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**Page(s) 000002 to 000002**

**Is(Are) exempted pursuant to section(s)  
est(sont) exemptée(s) en vertu de(s)(l')article(s)**

**21(1)(a), 21(1)(b)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**

**COMMUNICATIONS IMPLICATIONS:**

- CIC communications are fully apprised of these provisions and will include them as part of their comprehensive communications strategy, and the Government of Canada communications strategy, relating to the crisis in Haiti.

**RECOMMENDATIONS:**

- It is recommended that you approve the temporary public policy as attached.

*This information was removed at the request of the Faculty of Graduate and Postdoctoral Studies (FGPS), University of Ottawa, according to the Privacy Act.*

I concur

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The Hon. Jason Kenney, PC, MP

Attachments (3):

- 1 Public Policy document
- 2 Exemption from the requirement to provide evidence of payment of applicable fees
- 3 Delegation of Authority under Subsection 25(1) of the *Immigration and Refugee Protection Act*

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**TEMPORARY PUBLIC POLICY CONCERNING CERTAIN IMMIGRATION FEES  
FOR FOREIGN NATIONALS AND PERMANENT RESIDENTS AFFECTED BY  
THE HUMANITARIAN CRISIS IN HAITI AS OF JANUARY 12, 2010**

**Background**

With respect to the humanitarian crisis in Haiti as of January 12, 2010, and as part of the Government of Canada's response, the Minister hereby establishes the following temporary public policy under section 25 of the *Immigration and Refugee Protection Act (IRPA)*.

**Public policy**

As of January 12, 2010, applications made overseas under the *Immigration and Refugee Protection Act (IRPA)* by foreign nationals and permanent residents of Canada who are assessed by delegated officers as directly affected by the humanitarian crisis in Haiti, for a temporary resident visa, temporary resident permit, work permit, study permit, permanent resident travel document, or an authorization to return to Canada, will receive an exemption from fees which are normally applicable.

Foreign nationals that have been processed for permanent residence in either the family or economic class who are directly affected by the situation in Haiti and unable to present a prescribed travel document from their country of nationality, are exempted from the requirement to hold a prescribed travel document and may travel to Canada on a Single Journey Travel Document (IMM 5565) issued with a IM-1 visa counterfoil to facilitate obtaining permanent resident status.

Foreign nationals who are assessed by delegated officers as directly affected by the humanitarian crisis in Haiti who arrive at a Canadian Port of Entry after January 12, 2010 and who will be documented on a temporary resident permit to overcome a lack of prescribed travel documentation will receive an exemption from fees which are normally applicable.

Foreign nationals who are assessed by delegated officers as directly affected by the humanitarian crisis in Haiti making an application after January 12, 2010 for an extension of temporary resident status within Canada, or to change temporary status will receive an exemption from fees which are normally applicable. In the case of work permit applications, the applicant will also be exempt from the requirement to present a valid Labour Market Opinion from Service Canada, and from restrictions against applying for a work permit from within Canada.

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Permanent residents who were evacuated from Haiti and who are seeking replacement Permanent Resident Cards within Canada who have made an application after January 12, 2010 will receive an exemption from fees which are normally applicable.

In view of this public policy, an exemption from the need to provide evidence of payment with an application, as required by paragraph 10(1)(d) of the *Immigration and Refugee Protection Regulations* (see Annex 1) is granted. This exemption allows officers to receive applications without requiring evidence of payment of applicable fees.

In view of this public policy, an update to the instruments of designation and delegation is required (Annex 2).

*This information was removed at the request of the Faculty of Graduate and Postdoctoral Studies (FGPS), University of Ottawa, according to the Privacy Act.*

Minister of Citizenship, Immigration and Multiculturalism

Dated at Ottawa, this     day of January 2010

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